

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

33-4

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 28 1969

Nathan J. Paulson
CLERK

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

793

No. 22,666

CARL T. BENTLEY
and
MILDRED BENTLEY,

v.

CARL W. CLEWLOW,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPENDIX

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1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARL T. BENTLEY
4409 - 16th Street, N. E.
Washington, D. C.

MILDRED BERTLEY
4409 - 16th Street, N. E.
Washington, D. C.

Plaintiffs

Vs.

Civil Action No. 1828-66

CARL W. CLEWLOW
203 Poplar Drive
Falls Church, Virginia

Defendant

DOCKET ENTRIES

1966

July 12 - Deposit for cost by Complaint, appearance and Jury Demand filed.

July 12 - Summons, (2) copies (2) and copies (2) of Complaint issued served DMV 7/14/66.

July 12 - Traffic act bond of plaintiffs in sum of \$250.00 with National Surety Corp. approved. Curran, J.

July 22 - Affidavit as to mailing; exhibit. filed

August 1 - Answer of defendant to complaint; c/m 7/29/66; appearance of Swingle and Mann. filed

August 1 - Calendared (N)

August 1 - Interrogatories of defendant to plaintiff No. 1; c/m 7/29/66. filed

1967

January 19 - Notice of deft. to take deposition of plttf. No. 1; c/m 1-18. filed

February 14 - Order denying motion to consolidate CA 3354-66 with CA 1828-66. (N) (filed in CA 3354-66) McGuire, J.

March 1 - Notice of deft to take deposition of officer John A. Peterson; c/m 2/28/67. filed

March 8 - Answers of pltf No. 1 to interrogatories; c/m 2/13/67. filed

March 8 - Order granting motion to reconsider motion to consolidate CA 3354-66 and CA 1828-66; denying without prejudice motion to consolidate. (N) (filed in CA 3354-66)

March 22 - Deposition of pltf No. 1 2/21/67. filed
 March 30 - Deposition of John A. Peterson 3/13/67. filed
 April 4 - Certificate of Readiness. (AC/N) filed
 May 1 - Order consolidating CA 1828-66 and CA 3354-66 for
 trial. (N) AC/N Curran, C.J.

1968

June 18 - Pretrial Proceedings; Pltf. may take deposition of
 Richard Hoffman Pretrial Examiner

June 20 - Notice of deft. to take deposition of Richard Hof-
 fman. c/m 6/19/68. filed

June 26 - Answer of plaintiffs to interrogatories. (filed in CA
 3354-66) filed

July 25 - Deposition of Richard Hoffman for deft. (fee \$33.60)
 filed

October 4 - Letter in re: witnesses by pltf. filed

October 11 - List of witnesses by deft, c/m 10/9/68. filed

October 16 - Stipulation settling complaint in CA 3354-66
 serving third party complaint in CA 3354-66; agreement as to cer-
 tain findings by jury in CA 1828-66. filed

October 16 - Jurors sworn on voir dire; Jury and two alter-
 nates sworn; respited until Oct. 17, 1968 at 10:00 a.m. (Rep.
 Marie Taylor)

Oct. 17 - Trial resumed; same jury and same alternate jurors;
 respited until Oct. 18, 1968 at 11:00 a.m. (Rep. Marie Taylor) Mc-
 Garraghy, J.

October 18 - Trial resumed; same jury and same alternate ju-
 rors; respited until Oct. 21, 1968 at 10:00 a.m. (Rep: Marie Taylor)
 McGarraghy, J.

October 21 - Trial resumed; same jury and same alternate ju-
 rors; Verdict for Pltffs. Carl T. Bentley and Mildred Bentley vs. deft.
 in the amount of \$7,500.00 and \$1,125.00 respectively. (Rep:
 Marie Taylor) McGarraghy, J.

October 21 - Instructions No. 1 thru 11 of Deft. filed

October 21 - Verdict and Judgment for Pltff. Carl T. Bentley
 vs. deft. in amount of \$7,500.00 and for Pltff. Mildred Bentley
 vs. deft. in amount of \$1,125.00. (N) McGarraghy, J.

October 28 - Motion of deft. for Judgment Non Obstante Veredicto; P & A; c/m 10/25/68; M.C. filed

November 1 - Opposition of plaintiffs to motion for judgment Non-Obstante Verdicto; Memorandum; c/m 11/1/68. filed

November 26 - Motion of Deft. for judgment non-obstante verdicto denied. (fiat) (N) McGarraghy, J.

December 13 - Notice of appeal by deft. from order of 11/26/68. Copy mailed to Roy M. Ellis. Deposit \$5.00 by Mann. filed

December 23 - Designation of record by deft. c/m 12/23/68. filed

1969

January 8 - Transcript of proceedings 10/17/68 (Rep: Marie S. Taylor) (Court's Copy) filed

January 8 - Transcript of proceedings 10/18/68. (Rep: Marie S. Taylor) (Court's Copy) filed

COMPLAINT FOR DAMAGES (Personal Injury and Property Damage)

FILED

JUL 12 1966

COUNT ONE

1. The jurisdiction of this Court is based upon the fact that the amount in controversy exceeds Ten Thousand Dollars (10,000), exclusive of interest and costs. The plaintiff is a citizen of the United States and a resident of the District of Columbia; the defendant is likewise a citizen of the United States and a resident of the State of Virginia.

2. On or about December 29, 1965, in the District of Columbia, the plaintiff, Carl T. Bentley, was operating a motor vehicle north on Fourth Street, Northwest, at or near the intersection of "W" Street; a motor vehicle owned by the defendant and operated by one Roger M. Burnham, with the knowledge and consent of the defendant was proceeding east on "W" Street at or near the intersection of Fourth Street, Northwest. On this occasion Roger M. Burnham operated the

defendant's automobile in such a negligent and careless fashion and in violation of certain traffic regulations then and there in effect so as to collide with the automobile operated by the plaintiff, Carl T. Bentley.

3. As a result of said collision, caused by the negligence of defendant and/or the operator Burnham, the plaintiff, Carl T. Bentley, suffered certain severe personal injuries whereby he required and did obtain medical care and treatment; that he did suffer much pain, mental anguish and distress; lost much rest and expended much money by reason of his injuries; he will suffer much pain and distress, be caused to expend much money in the future for the reason that certain of his injuries are permanent.

WHEREFORE, the plaintiff Carl T. Bentley, demands judgment against the defendant in the sum of One Hundred Thousand Dollars (\$100,000), besides costs.

COUNT TWO

As a further cause of action against the defendant, the plaintiff Mildred Bentley states:

1. That the allegations set forth in paragraphs 1 and 2 of Count One of the complaint are hereby adopted and re-alleged as part of this Count.

2. As an additional result of the negligence of the defendant and/or Roger M. Burnham the plaintiff sustained damage to his automobile.

WHEREFORE, the plaintiff Mildred Bentley, demands judgment

against the defendant in the sum of Three Thousand Five Hundred Dollars (\$3,500).

MITCHELL, ELLIS & SHORTER
Attorneys for Plaintiff

By: 

Roy M. Ellis
508 Fifth Street, N. W.
Washington, D. C.
ME 8 4040

JURY DEMAND

Plaintiff demands trial by jury of all issues herein.


Roy M. Ellis

FILED

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ANSWER TO COMPLAINT

COUNT ONE

FIRST DEFENSE

Count One of the complaint fails to state a claim against the defendant upon which relief can be granted.

SECOND DEFENSE

1. The defendant admits the jurisdiction of the Court and the allegations of paragraph one of Count One of the complaint.
2. The defendant admits the happening of an accident at the time and place stated in the complaint and admits ownership of

the vehicle operated by Burnham but the remaining allegations are denied.

3. The defendant denies all allegations of negligence charged against him and has no knowledge or information sufficient to form a belief concerning the injuries, losses and damages alleged in paragraph three of Count One of the complaint and demands strict proof thereof.

THIRD DEFENSE

Such injuries, losses and damages as the plaintiff, Carl T. Bentley, may have sustained were the result of his sole negligence or contributory negligence.

COUNT TWO

FIRST DEFENSE

Count Two of the complaint fails to state a claim against the defendant upon which relief can be granted.

SECOND DEFENSE

1. The defendant denies all of the allegations of paragraph one of Count Two of the complaint.

2. The defendant denies all allegations of negligence contained in paragraph two of Count Two of the complaint and is without knowledge or information sufficient to form a belief as to damages to plaintiffs' automobile and demands strict proof thereof.

THIRD DEFENSE

Such injuries, losses and damages as the plaintiff, Mildred Bentley, may have sustained were the result of the sole negligence or contributory negligence of the plaintiff, Carl T. Bentley.

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[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

FILED

INTERROGATORIES

AUG 1 1955

TO: Carl T. Bentley
% Roy M. Ellis, Esquire
508 - 5th Street, N. W.
Washington, D. C. 20001

Please take notice that the within interrogatories must be answered fully under oath, in writing and your answers filed and served upon counsel within fifteen (15) days of receipt of the interrogatories.

1. State your full name, date of birth and marital status. If married, give the date and place of marriage, and the name and present address of your spouse. If you have ever used any other names please list them, and the years you have used them.
2. State your present address and all former addresses for the past ten years and the inclusive dates of each.
3. State the names and addresses and family relationship to you of all persons known to you or to your attorney who have knowledge of any facts pertaining to the happening or circumstances of the accident, and indicate which of such persons were eyewitnesses.

4. Do you, or any of your agents, have photographs of the accident scene or any other photographs relevant to this case? If so, state the date each photograph was taken, the name and address of the photographer, and the identity of the subject or object shown in each such photograph.
5. Were any trials or hearings ever held or investigations by public authority made in connection with this occurrence? If so, state the date, place and nature of each trial, hearing or investigation. If the proceedings were stenographically reported or recorded, give the name and address of the reporter or reporting company, or of the repository of the record.
- 6A. Give the time and date, as closely as you are able to do so, of the onset of the pain or other symptoms of each injury.

B. Give the date of the last professional treatment for each injury.
- 7A. State in your own words precisely and in detail the nature, extent and duration of all physical complaints and injuries claimed by you to have been sustained in the accident.

B. State in what way and for what period of time you were restricted in the use of your arms, legs, back, neck, or any other part of your body, as a result of the accident in question.
- 8A. State the names and addresses of all doctors you consulted or who examined or treated you since the time of this accident giving the date of each examination, consultation or treatment.

B. Give name of the author and date of each written report which has been submitted to you or your attorney by all doctors and hospitals.
9. If you were examined or treated at any hospital by reason of the alleged accident, state the nature of the examination or treatment, the names and addresses of the hospitals and the inclusive dates or hours of stay in each hospital.
10. Give the dates of any and all confinements to bed, and also specify any and all confinements to home occasioned by this accident.

11. State the nature and extent to which this accident has aggravated, accelerated, or activated any previously existing injury, disease or physical condition.
12. Have you ever, either before or after the accident complained of in this suit, submitted to one or more x-ray examinations of the parts of the body allegedly injured in the accident complained herein? If so, give the dates thereof, and the names and addresses of the persons who made the x-ray examination and state what injuries or condition, if any were revealed.
- 13A. State whether you received any injury in any accident or occurrence at any time either previous or subsequent to the date of the accident complained of in this case.
 - B. If your answer is yes, then state the details including date and place of occurrence, nature of the injury sustained, names and addresses of the parties involved, names and addresses of your then attending physicians.
14. Have you ever made claim against anyone for damages because of the previously or subsequently incurred injuries? If your answer is "yes" then state the name and address of the persons and/or companies with whom you or your representative dealt; if suit was filed, give the case number and name and place of the court in which the action was brought.
15. State the names and addresses of all of your employers since immediately prior to the accident, and for each state the nature of your duties and physical activities; the days worked per week, the amount of wages before deduction per week and specify the dates and amounts of any changes in earnings during the period covered.
16. If you claim to have lost time or income from employment as a result of the injuries sustained in this accident state precisely the dates, and hours if part of the day, of your absence from employment; give an itemized statement of the amount of wages lost on account thereof, and the names and addresses of employers from whom said wages or income would have been received.
17. If you claim to have lost time or income from self-employment as a result of this accident, describe the business involved, and give the dollar amount of your

claimed loss and set out your basis for calculating such amount, including but not limited to the time, profit, benefit, jobs, account, or business lost, and the names of the persons from whom the lost income should have been received.

18. Have you sustained any loss of time or benefits not of a monetary nature from any endeavor, pursuit or occupation not covered in the previous questions, or have you been hindered in any way from performing them by reason of the injuries you claim to have sustained in this accident? If so, state in what way and to what extent you have been affected.
19. Did you file Federal Income Tax Returns for the years 1964 & 1965? State the name and address of the person or persons who presently have duplicate copies of said returns, specifying for each year.
20. Give a current itemized statement, including the name and address of each payee and the amount paid each payee and the balance due each payee on all items of monetary loss or damage incurred to date as a result of the accident complained of, including hospitals, doctors, nurses, x-rays, medicines, care, appliances, transportation, property damage, and all other expenses but excluding loss of earnings stated above.
21. State the name and address of any insurance company that is subrogated to all or part of any item of damage claimed by you in this action.

These interrogatories shall be deemed continuing so as to require supplementary answers if further information is obtained between the time answers are served and the time of trial.

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[Caption Omitted in Printing]

FILEDANSWERS TO INTERROGATORIES

MAR 8 1967

1. Carl Thornton Bentley, d/b 3-3-18. Married. New York City 5-24-1941. Mildred Bentley. 4660 Nichols Ave., S. W. A906.

2. 4660 Nichols Ave., S. W.; 4409 - 16th Street, N. E. (11-59 - 1-67); 3800 Hayes St., N. E. (1946 - 1959)

3. None

4. None

5. Yes. Spring 1966. Hearing before Permit Control Officer. Dept. of Motor Vehicles. Stenographically reported. Do not know name or address of reporter. Also, hearing before Asst. Corp. Counsel Clark King. Not reported.

6. A. Immediately following injury. December 29, 1965.

B. January 26, 1967 for orthopedic problems.

7. A. Fracture distal tibia, multiple rib fractures; fracture fibula malleolus; contusions to both shoulders; injury to rotator cuff; laceration of scalp; cerebral concussion; laceration to left eye; internal bleeding; pain in cervical region (traction); lacerations of right and left thighs; pain in the back; memory lapses; myocardial infarction

B. Hospitalized for six weeks immediately following accident; for six month thereafter until June 1966 was restricted in use of legs and walking. Also has pain in neck and back for this period.

8. A. Dr. Charles Epps, 3901 Georgia Ave., N. W.; Dr. La Salle Leffal, Freedmens Hospital; Dr. Francis Blackwell, 1130 7th St., N. E.; Dr. Jesse Barber, Freedmens Hospital.. Medical reports will be supplied.

B. See 8 A

9. Freedmens Hospital 12-29-65
10. Six weeks in Freedmens Hospital
11. Aggravated cardiac condition.
12. 1958 Staten Island Hospital New York. X-ray of cervical region
neck injury
13. Yes, 1958 Jones Act Compensation Case - neck injury; New York
; 1963 Jones Act

B. Compensation case, broken finger on board ship; 1954 Jones
Act Compensation case lumbo sacral strain on board ship.

14. See answer to 13 B
15. Member of National Maritime Union (Seaman) since 1953.
16. None
17. None
18. None
19. Yes
20. The following list is complete:

Freedmens Hospital	\$1,431.07
Private nurses	360.00
Dr. Charles Epps	433.50
Dr. Francis Blackwell	253.00
Dr. La Salle Leffal	400.00
Hydrocallator set	4.95
Traction set	17.50
EEC	25.00
Dr. Jesse Barber	
Property damage	\$3,500.00

21. None

[Subscription Omitted in Printing]

[Certificate of Service Omitted in Printing]

[Filed June 18, 1968]

PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE:

Damages for personal injuries, property damage, due to negligence.

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF FACTS AND STIPULATE THERETO:

Carl W. Clewlow is plaintiff and third party D in C.A. 3354-66 and defendant in C.A. 1828-66. Carl T. Bentley is defendant and third party D. in C.A. 3354-66 and he and Mildred Bentley are Ps in C.A. 1828-66.

Carl Clewlow also is Administrator of the Estate of Sydney Michael Clewlow and is acting as plaintiff in C.A. 3354-66 in a wrongful death claim and a claim under the survival statute.

On December 29, 1965, Sydney Michael Clewlow as a passenger in an automobile owned by Carl W. Clewlow which was proceeding east on W. St., N.W., Washington, D.C. At the intersection of 4th and W Sts. the vehicle was involved in a collision with an automobile operated by Carl T. Bentley which was proceeding north on 4th St. Bentley's car was owned by Mildred Bentley. The collision occurred at about 2:00 a.m., it was dark, roads were dry and level. Traffic on W. Street was governed by a "stop" sign.

Carl W. Clewlow is the duly appointed and qualified administrator of the Estate of Sydney Michael Clewlow, who was killed in the accident.

CARL W. CLEWLOW, in his capacity as Administrator-plaintiff and defendant and third-party defendant denies any negligence or violations of traffic regulations on the part of Sydney Michael Clewlow or himself and asserts that the collision, the death, all injuries and damages were caused by the negligence of and violations of D.C. Traffic Regulations by Bentley. His specific allegations as to negligence, violations of traffic regulations, the names of witnesses who may be called by him, and the damages claimed by him are set out in the statement which is attached hereto, made a part hereof, and incorporated herein by reference marked "A".

CARL T. BENTLEY as plaintiff, third-party plaintiff, and defendant, denies any negligence or violations of traffic regulations and asserts that the accident, death, all injuries and damages were caused by the negligence of and violations of D.C. Traffic Regulations by the operator of the car in which Sydney Michael Clewlow was riding and the assumption of risk or contributory negligence of the decedent in that the driver failed to stop at a stop sign and yield the right of way (§48); reckless driving (§21a); failure to control vehicle so as to avoid colliding (§22a); unreasonable speed (§22a); failure to give full time and attention and failure to sound horn or give other warning.

The decedent and the operator of the vehicle in which he was riding were both under the influence of alcohol and had consumed alcoholic beverages in each other's company prior to the collision.

The claimed injuries sustained by Carl Bentley, his special damages, and the damage claimed by Mildred Bentley are set out in the statement which is attached hereto, made a part hereof, and incorporated herein by reference marked "B".

Furthermore Bentley asserts that any negligence or violation of traffic regulations on the part of the operator of the automobile in which decedent was a passenger is imputed to the decedent since the automobile in which he was riding had been placed in the custody of the decedent by the owner and the operator at the time of the accident was operating the automobile at the request of and for the benefit of the decedent and as his agent.

BENTLEY'S THIRD PARTY COMPLAINT is for contribution for the amount of any judgment which may be rendered against him.

FURTHER STIPULATIONS

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before June 26, 1968, a list of the names and addresses of any witnesses known to them, other than those listed herein, including medical and expert witnesses, who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

Counsel for Bentley shall furnish the Clerk of Court and all other counsel, on or before June 26, 1968, a written itemized list of all special damages not listed herein which will be claimed at the trial, past, present and future, actual or estimated.

Counsel for Bentley shall make him available for the purpose of a physical examination by a physician of Clewlow's choice before but not to interfere with, trial.

Counsel for Bentley shall furnish an authorization, which will be supplied by Clewlow's counsel within 2 days and returned to said counsel on or before June 26, 1968, which will enable Clewlow's counsel to obtain records re Bentley at the U.S. Public Health Service Hospitals in Baltimore, and Washington, D.C.

The following may be admitted in evidence without formal proof, subject to all other objections:

Hospital records

X-ray plates

The traffic regulations listed herein

H.E.W. Mortality Tables

Autopsy reports re Roger Burnham and Sydney Michael Clewlow

Metropolitan Police photographs and photographs initialled by Examiner

Records of American University re Sydney Clewlow

Transcript of Sydney Clewlow's record at Antioch College

Federal W-2 forms of decedent for years 1964, '65 and '66

Decedent's birth and death certificates

Bills initialled by counsel

High school records of decedent

It is agreed that if Roger Burnham was the driver of the car in which Sydney Clewlow was riding, he was operating with the consent of Carl W. Clewlow.

Counsel for Bentley may take the deposition of Richard Hoffman, provided no delay in the trial of the case results therefrom, and counsel for Clewlow may take the deposition of Eleanor Spicer, provided no delay in the trial of the case results therefrom.

Counsel for Bentley has in his possession photographs other than those referred to hereinabove, which have been initialled by Examiner marked "P" and which he requests be admitted in evidence at the trial, but defense counsel will make no agreement with relation thereto.

PRETRIAL EXAMINER

TRIAL COUNSEL:

/s/ Roy M. Ellis Counsel for Bentleys as Plaintiffs

/s/ Albert E. Brault Counsel for Bentley as Defendant

/s/ Peter A. Greenburg Counsel for Clewlow as Plaintiffs

/s/ William A. Mann Counsel for Clewlow as Defendant

The Examiner has requested counsel to come to the trial with the maximum amount of authority to settle the case which will be allowed them by their principals.

NEGLIGENCE: OF BENTLEY AS CLAIMED BY CLEWLOW IN HIS RESPECTIVE CAPACITIES:

Defendant, Carl W. Clewlow, alleges that the accident was caused by the sole and/or contributory negligence of the plaintiff, Carl T. Bentley, in that he was driving without a valid permit, same having been revoked previously for driving under the influence, that he was subject to temporary loss of consciousness or blackouts, that he was traveling at an excessive rate of speed in violation of the District of Columbia Traffic and Motor Regulations; that he was driving under the influence; that he failed to maintain a proper lookout. Section 99(c), Section 22(a), Section 22(b) and Section 22(c).

WITNESSES WHO MAY BE CALLED BY DEFENDANT: CLEWLOW:

Doctor Charles Apps

Doctor LaSalle Leffal

Doctor Francis Blackmill

Doctor Jesse Barber

William Smith, Freedmen's Hospital

Henrietta Quick, R.N.

Records Custodian, Washington Hospital Center

Records Custodian, U.S.P.H.S., Baltimore, Maryland

Records Custodian, U.S.P.H.S., Washington, D.C.

Richard Hoffman, 606 Timber Lane, Falls Church, Virginia

Officer J.A. Petersen, Metropolitan Police Department

Detective Phares, Metropolitan Police Department

Damages:

Plaintiff seeks damages under both the Wrongful Death and Survival Statutes.

As a result of the Wrongful Death, pecuniary loss including funeral expenses in the sum of \$2,049.46 have been sustained by plaintiff. If death had not occurred, decedent would have been entitled to maintain action for damages against defendant during his lifetime, but no such action was brought.

Decedent sustained mortal injuries and substantial loss of earnings and his earning capacity during his lifetime was eliminated.

The decedent, Sydney Michael Clewlow, was 19 years of age, unmarried, and a university student engaged in preparing himself for a career as a marine biologist. The decedent's life expectancy was 51.18 years at the time of his death.

Decedent had no dependents at the time of his death.

Plaintiff's Witnesses: (Clewlow, in addition to those listed above)

1. Carl W. Clewlow, 203 Poplar Drive, Falls Church, Virginia.
2. Beulah Clewlow, 203 Poplar Drive, Falls Church, Virginia.
3. John A. Petterson, Metropolitan Police Department, Washington, D. C.
4. Richard Hoffman, 606 Timber Lane, Falls Church Virginia.
5. Eleanor Spicer, 5416 North Hobcaw Drive, Hobcaw Point, Mount Pleasant, South Carolina.
6. Carl T. Bentley, 4409 - 16th Street, N. E., Washington, D.C.
7. Two witnesses as to ability and accomplishment of the decedent.

Witnesses as to the records of Antioch College, American University, National Institute of Health, and D.C. Public Library; a representative of Falls Church Funeral Home and an expert witness.

INJURIES OF PLAINTIFF CARL BENTLEY

1. Multiple rib fractures
2. Fracture right distal tibia

3. Contusion chest wall
4. Contusion left flank and left upper quadrant
5. Laceration of scalp
6. Cerebral concussion
7. Myocardial infraction
8. Cervical strain
9. Laceration of right and left thighs
10. Internal bleeding
11. Memory lapses
12. Laceration of left eye
13. Injury to rotator cuff on left
14. Fracture right ankle
15. Contusion of both shoulders
16. Aggravation of pre-existing cardiac condition - permanent

SPECIAL DAMAGES OF CARL BENTLEY

Freedmens Hospital	\$1431.07
Private Nurses	360.00
Dr. Charles Epps	488.50
Dr. Francis Blackwell	253.00
Dr. LaSalle Lefall	400.00
Hydrocallator set	4.95
Traction set	17.50
EEG	25.00
Dr. Jesse Barber	50.00
	<u>\$3030.02</u>

PROPERTY DAMAGE OF MILDRED BENTLEY

1963 Plymouth	Total Loss
---------------	------------

DEPOSITION OF CARL T. BENTLEY

2

P R O C E E D I N G S

Thereupon,

CARL T. BENTLEY,

plaintiff herein, called as a witness by counsel for defendant,
and having been first duly sworn by the Notary Public, was
examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. MANN:

Q Mr. Bentley, would you please state your full name?

A Carl Thornton Bentley.

Q Where do you reside?

A 4660 Nichols Avenue, Southwest.

Q How long have you lived there?

A Approximately one month.

Q Where did you live prior to that time?

A 440 - 16th Street, Northeast, Washington, D. C.

Q Who do you reside with at this address on Nichols
Avenue?

A My wife.

Q What is her name?

A Mildred.

Q Do you have any children?

A No, I don't.

Q What is the date of your birth, Mr. Bentley?

A March 3, 1918.

3

✓ Q What is your occupation?

✓ A I am a merchant seaman.

/Q What type merchant seaman work do you do?

A Steward's Department.

Q Where are you employed?

A At present?

Q Yes.

A At the present, I am not physically employed in my work.

✓Q Where were you last employed?

A The S. S. Constitution.

✓Q When were you employed there?

A From July 15th to September 15, 1966.

Q Did you sustain any injury during the course of your employment on the S.S. Constitution?

A No, I did not.

Q Do you draw any compensation for injuries received in the maritime work that you do?

A Compensation?

Q Yes, sir.

A No.

✓Q Do you draw any disability insurance or anything like that?

✓A Yes, I do -- maintenance and cure at the present time.

Q What's that? Can you elaborate a little bit on

4 that? What does it involve? What is "maintenance and cure"?

A When a seaman is disabled and he is aboard a vessel.

Q How were you disabled, Mr. Bentley? What caused it?

A I have a cardiac condition.

Q Was it caused by your employment?

MR. ELLIS: I don't know that he can answer that.

THE WITNESS: I can't answer that.

BY MR. MANN:

Q Does it have to be caused by your employment for you to draw this?

A Does it have to be caused---

Q Yes.

A I had a reoccurrence, if that's what you mean.

Q When did you have the reoccurrence?

A September 15th.

Q Of what year?

A 1966.

Q You haven't worked since what month and what year?

A September 1966.

Q How much compensation do you draw?

A \$8.00 per day.

Q \$8.00 a day?

A Yes -- since I have been released from the hospital.

Q Now, directing your attention, Mr. Bentley, to December 29, 1965, an accident in which you were involved at

5 Fourth and W Streets, Northwest, can you tell us what time of the day this accident took place, approximately?

A It was somewhere between 1:30 and 2:00 a.m.

Q Where had you been?

A I came downtown; I had played a little cards and was on my way home.

Q What automobile were you driving?

A 1963 Plymouth.

Q Were you alone?

A Yes, I was.

Q Just prior to the accident, immediately prior to the accident, what street were you travelling on?

A Before I entered Fourth Street?

Q Just immediately prior.

A Fourth Street.

Q Which way were you going on Fourth Street?

A I was going north.

Q What hundred block, just immediately prior to the accident?

A What hundred block?

Q Yes.

A It's in the 20-some hundred block -- which, I don't know.

Q And had you had anything to drink where you were playing cards?

6

A No, I had not.

Q Not at all?

A No.

Q No beer?

A No.

Q No intoxicating beverages of any kind?

A No.

Q Can you tell us what happened? How did the accident occur?

A Well, I was traveling north on Fourth Street and I was looking straight ahead, and I was hit.

Q Where were you hit? At the intersection?

A I suppose in the intersection. I, frankly, couldn't tell you anything about where I was hit. I know the street is controlled by a Stop Sign. I had my caution, and I'm looking straight ahead of me, and I was hit by some flying vehicle.

Q You didn't look to the right or the left?

A I couldn't definitely say as to whether I did.
I was looking straight ahead. I know I was looking straight ahead.

Q How fast were you going?

A Less than the speed limit, between 25 and 30 miles an hour.

Q Had you slowed for this intersection at W Street?

7

A I was just keeping a normal slow speed. I didn't necessarily--- I had no reason to hit my brakes or anything like that. The intersection is controlled by a Stop Sign. It's a boulevard.

Q You said you were struck by another car. What kind of a car struck you?

A Well, I have since learned that it was an old model Plymouth.

Q Did you see it before it struck you?

A No.

Q What side of your car did it strike?

A All I have been made to understand -- I haven't seen the car -- I have been told by my wife and others and the newspapers that it was on the left side, on the driver's side.

Q What happened to you when you were struck?

A I don't know.

Q Were you knocked unconscious?

A I don't remember anything from that moment.

Q Till when?

A Till waking up in Freedmen's Hospital.

Q The police officer estimated your speed at 50 to 60 miles an hour. Do you deny that?

A I deny that.

Q You didn't put on your brakes or anything like that

8 at the time of the accident?

A Not that I know of.

Q Do you recall waking up in the Emergency Room at Freedmen's Hospital?

A Vaguely; very, very vaguely; very vaguely.

Q Do you recall an officer by the name of Peterson talking with you there?

A I wouldn't recall anyone by any particular name -- I was out, and I saw a blue uniform and that is all. I don't even know what I saw. I saw that I was in--- I realized my head was being sewn. I just realized that; but I was in great pain and I couldn't describe the room or anything.

Q Do you recall him asking you if he could take a urine specimen, and you refused him?

A No, I don't recall that.

Q You don't recall that?

A No.

Q Do you deny saying that, that you refused?

A I couldn't deny it -- the state of mind I was in, because I was unconscious, as far as I know.

Q Do you deny that he could have smelled alcohol on your breath?

A Do I deny it?

Q Yes.

MR. ELLIS: First of all, Mr. Mann, I think you ought

9 to relate it to some basis, whether you contend the officer did---

MR. MANN: The officer contended he smelled alcohol on Mr. Bentley's breath.

MR. ELLIS: I don't believe he did, Mr. Mann. I was at the hearing, as you were, and Officer Peterson did not say that, to my recollection.

MR. MANN: I think you're mistaken. His answer was, "There was an odor of alcohol." I don't know how much more direct than that an answer can be.

MR. ELLIS: Is that the transcript? (Indicating)

MR. MANN: Yes. "There was an odor of alcohol," on page 6 of the transcript.

MR. ELLIS: --coming from where?

MR. MANN: Coming from the Emergency Room at Freedmen's Hospital.

MR. ELLIS: I guess there is at the Emergency Room. I don't think he is required to answer that.

MR. MANN: Do you direct him not to answer?

MR. ELLIS: Unless you want to reframe the question.

MR. MANN: I am not going to reframe it. Do you direct him not to answer?

MR. ELLIS: I direct him not to answer that question.

BY MR. MANN:

Q Was there alcohol on your breath when you were in

10 Freedmen's Hospital?

A In Freedmen's Hospital?

MR. ELLIS: You can answer that question.

THE WITNESS: No alcohol on my breath, no.

BY MR. MANN:

Q What were the nature of your injuries, Mr. Bentley?

A They were many.

Q Tell us what they were.

A My God! There are hospital records. My whole body, you might as well say -- it comes that close.

Q Was your whole body broken, or what happened to you?

A I had---

Q You're the plaintiff in this lawsuit?

A --leg broken in a couple of places and so forth.

Q Which leg was broken?

A Right leg.

Q Where was it broken?

A Where?

Q Yes, sir.

A Down here is where I have gotten pain; down here (indicating).

Q Did they tell you your leg was broken?

A They put it in a cast. They told me I had fractures.

Q How long was your leg in a cast?

A Well, the cast was removed after possibly 2-1/2 months;

11 something like that, I guess.

Q How long did you stay in the hospital?

A About six weeks.

Q And they told you your right leg was broken in two places, is that right?

A That's right.

Q What other injuries did you sustain?

A Well, I had lacerations all over my body. My head was sewn in the back. What went on inside, internally, I can't say because I don't know what went on inside.

Q Well, do you have any bruises on your chest?

A I have bruises. I have bruises now on my legs and everywhere else I have bruises.

Q Where do you have lacerations? You said on your head. What part of your head?

A Down here somewhere, where the man was sewing it up.

Q How many stitches were taken?

A I don't know. My left eye was stitched.

Q Where?

A Here (indicating).

Q What part of your left eye, underneath or over it?

A Right where I show you (indicating).

Q Is there any scar there now?

A I'm sure there is.

Q I don't see it, but my eyes aren't the best. Your

12 leg was in a cast about two months?

A Something like that.

Q Have you worked since then?

A Yes, I have.

Q When did you go back to work?

A Well, I took a little light job for about a month at a Georgetown restaurant to see if I could get around good enough and found that I could, and I went back to sea.

Q On the S.S. Constitution?

A On the S.S. Constitution.

Q What month did you go back to sea on the S.S. Constitution?

A July 15, 1966.

Q When did you sustain this injury on the S.S. Constitution, or this recurrence?

A It wasn't an injury.

Q This recurrence.

A I had some chest pains, and I was just taken to the hospital.

Q When did you sustain those?

A September 15th.

Q Or '66?

A 1966, right.

Q Where was the S.S. Constitution when you sustained these chest pains?

13

A In the Mediterranean, leaving the Port of Cannes.

Q I'm sorry. I didn't hear.

A In the Mediterranean, leaving the Port of Cannes.

Q When were you evacuated?

A I was evacuated on the 15th of September.

Q How were you evacuated?

A By tender, to a hospital in Spain.

Q In Spain?

A Yes.

Q How long did you remain in the hospital in Spain?

A Five, six days.

Q Where in Spain?

A Algeciras.

Q How were you evacuated from the hospital in Spain

back to this country?

A By airplane.

Q Do you have a valid D. C. driving permit?

A Yes, I do.

Q May I see it?

MR. ELLIS: Do you have it with you?

THE WITNESS: Yes. (Handing it to Mr. Mann.)

BY MR. MANN:

Q When did you apply for this D. C. driver's permit?

A 3/27 of some year -- I guess three years before, it had been, as you see, revalidated. When did I apply for the

14 revalidation, do you mean?

Q Yes.

A 1/23/67, wasn't it?

Q January 23rd of this year, 1967---

A --that I applied.

Q --For revalidation?

A No, no, that's merely an address change.

Q Oh, I see. This was issued 3/27/64. Did you fill out any application to get this new permit, this new address 1/23/67? Did you have to fill out another application?

A Yes.

Q Did you state your physical condition or anything?

A At the time of getting this?

Q Yes.

A Not at the time of getting the thing I didn't.

Q Do you recall any x-ray technicians being in the Emergency Room at Freedmen's Hospital the night of the accident, after you woke up?

A I don't recall anybody being in Freedman's Hospital. I don't recall anything of that night -- day -- a couple of days almost. I don't recall anything at Freedmen's Hospital.

Q If an x-ray technician told an officer that it wouldn't do any good to talk to you, would he be mistaken?

MR. ELLIS: He is not required to answer that, Mr. Mann. He says he doesn't recall anybody being there, and

15 he has already said there was no alcohol on his breath, so I think that's an unfair question to ask this witness. You could ask the technician.

MR. MANN: Don't worry. I already have.

BY MR. MANN:

Q Where had you been playing poker that night?

A On T Street, some person's house, a traveling game, you know.

Q You don't remember the address?

A The exact address?

Q Yes.

A No, not in that area, Tenderloin Area -- there may be a game anywhere.

Q Do you know the names of any one you were playing with?

A No.

Q Not a single person?

A No, just people I might see at poker games.

Q You don't know anybody by their names?

A I may know somebody by their names -- I don't go there that frequently.

Q How long had you been there before you left and went to the accident? What time did you arrive at the poker game?

A Maybe an hour.

16 Q You arrived at the poker game---

A Been an hour, hour-and-a-half, and I left.

Q Have you ever been charged with driving under the influence?

A Yes, I have.

MR. ELLIS: I am going to object to that, the relevancy here. But he's already answered.

BY MR. MANN:

Q When did you learn that two boys were killed in the accident in which you were involved?

A In Freedmen's Hospital.

Q Do you know who was driving the other car that was involved?

A No, I don't.

Q You never saw him?

A No, I didn't.

Q Did you see any lights of the car with which you were involved in a collision -- see any headlights?

A No, I did not. Don't believe he had any on.

Q Did you see the car with which you were involved?

A No, I did not.

Q Are you claiming any permanent injuries as a result of this accident?

A Do I claim any permanent injury?

Q Yes.

17

A I still have pain, if that's what you mean.

I am not a doctor, Mr. Swingle. I have pain, yes.

Q Where do you have pain?

A I have pain in my neck, back, lots of places in my body.

Q Caused by this accident?

A I cannot determine what causes them. I am not a doctor, Mr. Swingle. I can't determine that.

Q This money you get, \$8.00 a day, \$240.00 a month, who pays you that?

A Paid through an agreement of contract between my union and the steamship company.

Q Does the union pay you or the steamship company pay you?

A The steamship company.

Q Which steamship company pays you?

A American Exporters-Isbrantsen -- something like that,

Q What's the basis for your drawing this compensation?

A It's got to be with Marine Law, Mr. Swingle -- Mr. Mann -- I'm sorry. Marine law, contract agreement -- the company and the union. You can find your answer there somewhere. I can't.

Q Don't you know the basis for it?

A No, I don't know the agreement.

Q But it would have to be on the basis of an injury

18 you sustained on the ship, would it not?

MR. ELLIS: I think the witness has answered the question, Mr. Mann.

MR. MANN: I don't think he has.

MR. ELLIS: If you don't know, say you don't know; don't guess, don't speculate.

MR. MANN: I know a little bit about American Export Lines. I have had a few dealings with them. They don't pay money unless the disability was based on the course of your employment. That I know.

MR. ELLIS: You have the advantage on both of us. The witness said he does not know. He said he had a recurrence of a heart attack while on board ship, and it is his belief that that's the basis for his receiving compensation. If you disagree with his answer, then I suggest you go to the Export Company and find out differently.

MR. MANN: Will you sign an authorization permitting me to go to American Export Isbrantsen Lines and find the basis of your receipt of this disability money?

MR. ELLIS: If you want to.

BY MR. MANN:

Q Do you agree, Mr. Bentley?

A My attorney spoke for me.

Q I want to be sure you agree to it. You'll execute such an authorization?

19 A Yes.

MR. MANN: I have no further questions.

I would appreciate any suggestions -- Off the record.

(Discussion off the record.)

(By stipulation of counsel,
reading and signing of the
deposition was waived.)

(Whereupon, at 3:35 o'clock p.m., the taking of the
above-entitled deposition was concluded.)

Washington, D. C.,
October 17, 1968

1

P R O C E E D I N G S

(Voire dire and Opening Statements not transcribed.)

THE COURT: Mr. Ellis, you may proceed.

MR. ELLIS: Plaintiff calls Mr. Carl T. Bentley.

Thereupon,

CARL T. BENTLEY,

plaintiff herein, was called as a witness in his own behalf,
and having been first duly sworn, was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q Mr. Bentley, will you project your voice back here
towards me? Let us have first, Mr. Bentley, your full name and
present address.

A Carl T. Bentley. I live at 4660 Nichols Avenue, Southwest.

Q Is Mrs. Mildred Bentley seated at counsel table your wife?

A She is.

Q How old are you, Mr. Bentley?

A Fifty.

Q Are you employed, sir?

A At present, yes, I am, sir.

Q For whom are you employed?

A I work for the Washington Council Training Employment Program.

Q What is the general nature of your employment?

A I am a messenger.

2 Q Mr. Bentley, directing your attention now to the year 1965, tell me, at any time during that particular year, sir, did anything unusual occur to you respecting your health?

A In September of 1965, Labor Day to be exact, I suffered a coronary thrombosis in Atlantic City, in New Jersey.

Q What's the lay term for that?

A Heart attack.

Q Were you hospitalized as a result of that?

A Yes, I was.

Q Where, sir?

A Atlantic City, New Jersey.

Q For approximately how long were you hospitalized in September of 1965?

A About three weeks.

Q After that time, were you discharged, sir?

A Yes, sir.

Q Did you return to the District of Columbia?

A Yes, I did.

Q At or around this time, were you employed, sir?

A No, I was not, sir.

Q Incidentally, did you have a trade or occupation?

A Yes, sir.

Q --at or around that time?

A An occupation, sir?

Q Yes.

A Yes, sir.

3 Q What was your occupation around that time?

A I was a merchant seaman.

Q How long had you been a merchant seaman prior to this period of time, in point of years?

A Eighteen-nineteen years -- 1952, to be exact.

Q When you returned to Washington following your hospitalization in Atlantic City were you working?

A No, sir.

Q What was the reason?

A The doctor ordered me to rest.

Q Directing your attention more specifically now, Mr. Bentley, to December 29, 1965, do you recall anything unusual happening on this date? Yes or no?

A Yes.

Q Beginning around 8 or 9 o'clock on that evening, Mr. Bentley, do you recall where you were?

A Yes, sir.

Q Where were you, sir?

A At home.

Q At or around that time -- was Mrs. Bentley home at that time?

A She was.

Q Do you remember what you were doing at or around that time on this date?

A We had dinner, late dinner.

4 Q What time did you have dinner, sir, on this occasion?

A Between 8 and 9.

Q Did there come a time--- Incidentally, Mr. Bentley, where were you living December 29, 1965?

A 4409 Sixteenth Street, Northeast.

Q In the District?

A In the District.

Q Now, my question: Did there come a time, Mr.

Bentley, when you left home on this evening?

A Yes, I did, sir.

Q Do you recall approximately what time it was when you left home?

A It was after 11. It was possibly 11:00 or 11:30.

Q Did you leave home in the company of Mrs. Bentley or by yourself?

A By myself.

Q Did you have any mode of transportation on that evening?

A Yes, I did.

Q What was it?

A 1963 Plymouth.

Q Were you operating it?

A Yes, I was.

Q Who did that car belong to?

5 A My wife.

Q Having left the house, Mr. Bentley, where did you ultimately find yourself on this occasion?

A Well, I found myself in the 900 block of T Street, Northwest.

Q What if anything was going on in the 900 block of T Street on that occasion?

A Well, there was, to be frank---

Q I say, what was going on?

A A poker game, dice game.

Q Do you recall where this was located?

A Well, the address -- I think I had been to the place before.

Q Can you describe it in any regard?

A Yes, it's a door next to a house--- It's a house that protrudes, that sits next to a house that sits back in the yard. I had known the place for a couple of years.

Q Did you go into this place on this occasion?

A Yes, I did.

Q What was going on there when you got in there?

A Gambling.

Q What did you do?

A I played a few hands of poker. I sat out a poker hand.

Q How long did you remain there, sir?

6 A I would say from an hour to an hour-and-a-half.

I did not have much money -- didn't last long.

Q Did you do any drinking?

A No, sir.

Q --at this particular place?

A No, sir.

Q Incidentally, Mr. Bentley, was this the home or the place of a friend or anything like that?

A No, sir.

Q What type place would you describe this as being, if you can describe it?

A Well, a place where gambling went on at one time or another -- different times.

Q Did there come a time when you left, Mr. Bentley?

A Yes, I did.

Q Approximately what time of evening was this when you left?

A I would say I left around 1:45.

Q Did you leave alone or in the company of someone?

A Alone.

Q Where were you headed?

A I headed straight out the street.

Q I said where were you headed?

A Home.

7 Q Tell us, sir, if you will, at this point, in your own words, what you recall as being the route that you took, and just take us on up to the situs of the unusual occurrence that you recall having experienced on this date.

A Well, I went through T Street -- I was on T Street, I was parked on T Street. I proceeded through T Street to 4th Street where I made a left turn to proceed home. I go that way--- I went that way most of the time if I was in that area.

Q Let me ask you this, Mr. Bentley -- I suppose you almost answered the question: Had you ever traveled that route before?

A Yes, sir.

Q Are you a Washingtonian?

A Yes, sir.

Q Are you familiar with the route along 4th Street going north and south between, say T and the Reservoir?

A Yes, sir.

Q Are you familiar with the intersecting streets along that route?

A Yes, sir.

Q To your knowledge, on this particular day, were there any traffic signals or devices or signs along the route on your way home that you were aware of?

A On my way home?

8 Q Just yes or no.

A Yes, sir.

Q Did you know of their existence prior to your having traveled that route on this evening?

A Yes, sir.

Q Incidentally, Mr. Bentley, as you turned left into Fourth Street and proceeded north, do you recall what your speed was?

A 25-30 miles an hour, at the most.

Q What was the condition of the traffic on Fourth Street as you headed north?

A No traffic.

Q Resume, if you will, and tell us what you remember on this occasion, as you turned left on Fourth Street and proceeded north.

A Well, I proceeded north on Fourth Street---

Q Let me ask you this at this point: Do you recall whether Fourth Street at this point, at T Street, whether there are marked lanes?

A Yes, there are, sir. There are three lanes: it has one lane southbound and two lanes northbound, but there is parking allowed on the right-hand side of the street, so really, it's one-lane, center lane.

Q In which lane were you traveling, sir?

A Center lane.

9 Q When you say "center," well, you mean the closest to the center of the street?

A Well, it's actually the center of the street because it's divided into three parts.

Q Very well. Do you recall, sir, having been in the block between V and W Street on Fourth, on this occasion?

A Yes, sir, I remember that. I remember proceeding up Fourth Street.

Q Tell us, sir, what you remember as having happened,

if anything did happen, at or around this time in and around this area?

A Well, at this time, after I had left, you know, passing through the block, V and W, I don't remember anything that occurred after passing through that block.

Q Do you remember anything having happened at around 4th and W?

A I don't, sir.

Q Did anything unusual occur to you and your automobile?

A I don't remember, sir.

Q What is the last thing that you remember, Mr. Bentley?

A The last thing I remember is proceeding north on Fourth Street.

Q Of course, in your Complaint, it has been alleged
10 that there was a collision..

THE COURT: Mr. Ellis, that's not the question. The question here is, what this man can testify to.

MR. ELLIS: Very well. I will withdraw that.

BY MR. ELLIS:

Q Do you ever remember being at the intersection of 4th and W Streets?

A No, I don't remember being at the intersection of 4th and W Streets. I remember proceeding along Fourth Street and then everything stops.

THE COURT: You mean, your next memory is when you were in the hospital?

THE WITNESS: Yes, sir.

BY MR. ELLIS:

Q Do you remember a collision of any type?

A No, sir.

Q All right. What's the very next thing you remember, Mr. Bentley?

A Well, I had a vague remembrance of my head being
sown up.

Q Do you know where you were -- Has it subsequently--?

A I knew I was in the hospital. I had that much---

Q Do you know where you were?

A I know.

Q Where were you?

A In Freedmen's Hospital.

11 Q Do you now know how long you were in Freedmen's
Hospital, if you were?

A Yes, sir.

Q How long were you in the hospital?

A From December 29 to February 9.

Q Can you give us a reason why you don't remember
some of the things that I have asked you about?

MR. MANN: I will object to that. That allows him

to speculate all over---

MR. ELLIS: I simply asked if he can give us a reason.

THE COURT: I will sustain the objection.

BY MR. ELLIS:

Q Were you rendered unconscious, if you know?

A I think that I was. I mean, I don't--- I'm sure I was unconscious, if that's what you mean.

Q All right, Mr. Bentley. Now, you were admitted to Freedmen's Hospital.

THE COURT: He can't testify to that. He can't remember. All he knows is when he was in the hospital, as I understand it.

BY MR. ELLIS:

Q Based on the information you have received subsequent to December 29, 1965, do you know the purpose for which you---

112

MR. MANN: I would object to that.

THE COURT: I will sustain the objection.

BY MR. ELLIS:

Q Were you injured, Mr. Bentley, as a result of something that might have happened on December 29, 1965?

THE COURT: I will sustain the objection.

BY MR. ELLIS:

Q Mr. Bentley, you said you vaguely remember somebody

sewing up your head, is that right?

A Yes, sir.

Q Do you remember anything else in the hospital during the time you were there?

A Well, I have been questioned---

THE COURT: Now,---

BY MR. ELLIS:

Q I ask you, do you remember anything else that was done for you during the entire time you were there?

A Nothing other than my head being sewn up at that particular time, that particular night.

Q Between December 29 and February 9, do you remember?

A Yes, sir.

Q Would you tell us?

A Yes, sir. Well, I had a cast applied to my leg.

Q Which leg, sir?

13 A My right leg. I had a very painful condition in which I could not move without help.

Q Where was this pain located, if you recall?

A Well, the pain was over my body.

Q What part of your body?

A Really, my entire body. In other words, I was unable to turn over.

Q Was the pain generalized? Listen to my question, Mr. Bentley: Was the pain generalized or more severe or

less severe in a particular area?

A It was more severe in the rib area where my ribs were broken; there was pain in my leg. My leg was hurting. My chief pain was wanting to cough up something and not being able to. It hurt me to cough.

Q Do you know who treated you in the hospital, if anyone did?

A Yes, sir, Dr. Leffall, Dr. Epps.

Q Let's start with him. Do you know what he did for you?

A Well, he dealt with my internal injuries, soreness and various things, you know.

Q Was there any other physician who treated you?

A Dr. Blackwell treated me.

Q What did he treat you for?

A Well, he treated me for a heart condition.

14 Q Tell us about that. What kind of heart condition?

A Well, I had severe pains in the center of my chest.

Q Tell the jury---

MR. MANN: I object only on the grounds, your Honor, there has been no establishment of any--- He had a heart attack in September and was unable to work and his testimony now -- there is no causal connection.

THE COURT: I will receive it subject to a motion

to strike unless it is tied in.

MR. ELLIS: Of course, as indicated, I intend to prove medical -- I simply want the witness to testify to symptoms.

THE COURT: I understand. You may proceed.

BY MR. ELLIS:

Q Mr. Bentley, did you have any symptoms that required the professional services of Dr. Blackwell?

A I did, sir.

Q What were they?

A The heart.

Q What symptoms did you have?

A I had chest pains.

Q Anything else? Answer yes or no.

A For Dr. Blackwell, you say?

Q Yes.

15 A He treated me for the heart.

Q Were you treated by anybody else?

A I was treated by Dr. Epps.

Q For what did he treat you?

A He treated me for leg fractures and also neck and back injury. Neck injury, not really the back, but the back of the neck.

Q Did you receive any medications while you were in the hospital on this occasion from anyone for any reason?

A Yes, sir.

Q Do you know -- only if you know -- what those medications were or the purpose of them?

A Well, I know I was given Comadine to thin the blood.

Q For what condition is that used?

A So the blood will pass more freely through the heart.

Q Were you given any other medication for any other purpose that you know about?

A I was given other medications, but I don't know exactly what they were for when the nurses gave them to me.

Q Did you receive any type of treatment or therapy in the hospital for any of your injuries or ills?

A In the hospital, I was in the cast, and they weren't able to do much for it while I was in the hospital, other than keep the cast on.

Q Were you in or out of bed when you were in the hospital?

16 A I was in bed up until the last few days that I was in the hospital, completely in bed.

Q When do you recall having been out of bed, what date?

A Oh, I couldn't really recall the day, but I would say maybe after about a month.

Q How many days or weeks before you were discharged?

A I was discharged in about five weeks.

Q How many days before you were discharged, do you recall having been out of the bed?

A Four or five days, and that was not completely out of bed. That was out of bed in a wheelchair.

Q Did you have a cast on your leg at that time?

A Yes, I did.

Q Were you able to walk?

A No, I was not.

Q I will ask you this, going back a bit -- when I say "going back a bit," I mean going back to the beginning of your admission in Freedmen's Hospital: From the first time that you completely recall where you were and what your condition might have been, how did you feel?

A I felt very badly.

Q What were your complaints at that time?

A I was sore. I was unable to move.

Q Where were you sore?

A Throughout my body, as I said.

17 Q Can you specify any areas?

A Yes, I can specify.

Q Please.

A Legs, thighs, the internal part, to move in any direction was great pain.

Q Could you do for yourself?

A I wasn't able to do for myself for quite some time.

Q Were things done for you?

A Yes, they were.

Q What things were done for you?

A Massages and so forth were done by nurses.

Q Did you require any special type of attention?

A I did, sir.

Q What type of special attention did you require?

A I required nurses on 24-hour duty, nurses in the room at all times; I wasn't left alone.

Q Do you know who ordered this?

A Dr. Blackwell.

Q Do you know for what reason?

A As far as I was concerned, it was the heart. As to what I understood, it was the heart chiefly, plus other things that they were looking for, developments internally.

Q You say you had nurses---

A Nurses around the clock, yes, sir.

18

Q When you say "around the clock"---

A In 8-hour shifts.

Q Were these nurses other than the regular ward nurses who were on every duty station?

A Yes, they were, sir. They were private nurses hired---

Q Engaged by you?

A Yes, sir.

Q How many of those persons did you have engaged?

A Three.

Q For how long a period, if you recall, did you receive this special type of attention from these three nurses?

A One week.

Q Do you happen to know, sir, what they charged for this service?

A \$120. per week.

Q Was this collectively or per person?

A Per person.

Q Did you require any other special type of procedure or treatment while you were in the hospital that you recall?

A Well, the only treatment that I was given was the treatment for the heart and the orthopedic treatment for the leg, which you couldn't do anything for, for that; that was in a cast. There was other things that was constantly tests being
19 taken -- just all the time.

Q Let me ask you this, Mr. Bentley: Was any type of emergency measure performed in your regard?

A I was given a blood transfusion.

Q Do you remember when that was?

A Yes, I remember because it was New Year's Eve.

Q This was at whose direction, if you remember?

A Probably Dr. Leffall because I saw Dr. Leffall dressed for the evening on New Year's Eve, standing in front of my bed, in the morning of New Year's.

Q Do you know when you were discharged from the hospital?

A February 9, 1966.

Q When you were discharged from the hospital were you ambulatory? Could you walk?

A I could walk with assistance.

Q What type of assistance? With a cane?

A With a cane, and naturally, being the first couple of days, I had to have personal assistance along with the cane and cast.

Q You had a cast on?

A Yes.

Q Did you continue under the care of any physician subsequent to your discharge from Freedmen's?

A Yes, sir, I did.

Q Who was that person or who were those persons, if
20 there were more than one?

A Dr. Epps.

Q Does he have a particular area of specialty that you know about?

A Yes, he is a specialist in orthopedics.

Q Did you continue under his care?

A I did, sir.

Q Where did you see him?

A In his office at 3900 Georgia Avenue.

Q Would you tell us what he did for you on the occasion or occasions that you went to his office following your discharge?

A Well, the pain in my neck continued. I was given some sort of diathermy, I don't know just what.

Q What is diathermy, if you know?

A Heat.

Q And to what area of the body was it applied?

A To the neck and the back..

Q Did Dr. Epps do anything else for you on any of the occasions when he saw you after he left the hospital?

A Well, when my cast was removed---

Q When was your cast removed?

A I would have to guess.

Q Well, give us your best estimate.

A I would say the cast was removed in April sometime.

21 Q Who removed it, or saw that it was removed?

A Dr. Epps.

Q Tell us what treatment, if any, Dr. Epps caused

you to receive after your cast was removed.

A Well, I had the whirlpoos, and after the machine treatment in the office, he set up traction at home for me.

Q What type of traction was this, if you can tell us.

A Well, the traction was traction set up that has the water bags to add the weight.

Q To what part of your body was this traction applied?

A For the neck and back area.

Q You were having complaints were you sir, at this time?

A Yes, I was still having complaints.

Q What were your complaints at this particular time?

A Pain and soreness.

Q In what areas?

A The area of the neck and upper back, shoulders.

Q How was your leg feeling at this time?

A Very, very weak.

Q Were you able to place weight on it?

A Not for quite some time.

Q Did there come a time, Mr. Bentley, when you were able to do away with your cane?

A Yes, sir.

Q When was this approximately?

A Approximately around the first of May.

Q Do you recall how long you remained under the care of Dr. Epps, that is to say from the date that you were discharged from the hospital until he finally discharged you?

A As far as I can remember, it was--- I went back to him in June, I believe. I believe it was June that I had to go back.

Q That was the final time, as far as your memory?

A No. I saw him again. I began to have little pains and I saw him again about a year later.

Q Where were these pains that you had?

A Same region. I began aching in the wintertime, when the weather changed.

Q What region of your body?

A The neck.

Q When was the last time that you were seen by Dr. Epps for any of these complaints that you have told us about?

A I would say it was January of 1967.

Q Mr. Bentley, did Dr. Epps charge for the services that he rendered you?

A He did, sir.

Q Do you happen to know---

THE COURT: Are you going to have Dr. Epps here?

23 MR. ELLIS: Yes.

THE COURT: Can't he best testify as to his charges?

MR. ELLIS: I only asked for them, if he knew.

All right. It's all right. I keep that for him.

BY MR. ELLIS:

Q Do you know whether or not Dr. Leffall charged for his services?

A He did, sir.

Q Did Dr. Blackwell charge you for his services?

A He did, sir.

MR. ELLIS: May we approach the bench?

(AT THE BENCH:

MR. ELLIS: Your Honor, I have a subpoena out for Dr. Blackwell. Whether it's been effectively served on him I am unable to say, so could I ask him if he knows what Dr. Blackwell's charge is? They were all performed in the hospital.

THE COURT: I think so -- if he knows.

MR. MANN: If he knows. I object to your handing him the bill.

(BACK IN OPEN COURT:

BY MR. ELLIS:

Q Mr. Bentley, do you happen to know what was the amount of the charge that was made by Dr. Blackwell for his services? Yes or no.

Q I do, sir, yes, sir.

Q What was the amount of his charge?

A A flat figure, \$400.

Q This is Dr. Blackwell?

A No, no. I thought you said Dr. Lefall.

Q If I did, I'm in error. Do you happen to know the charge made by Dr. Blackwell? Yes or no.

A Not accurately. Close, but not accurately.

Q Following your discharge by Dr. Epps, Mr. Bentley, did there come a time, sir, when you either did go back to work of any type or attempted to go back to work?

A Yes, I did, sir.

Q Tell us when you made your first effort.

A Well, around the middle of May.

Q Give us the year now, sir.

A --of 1966.

Q What did you do in the middle of May 1966?

A Well, having discarded the cane and so forth, and trying to see, would I be able to wait on myself and how I would make it, I took a dinner job in a restaurant in Georgetown on M Street as a waiter; Frances' Restaurant was the name of the place. I worked there for thirty to thirty-five days, something like that.

Q Did there come a time, Mr. Bentley, when you
25 changed your employment there?

A Yes, sir.

Q When did this occur?

A In July of 1966?

Q What happened in July of 1966?

A I decided to go back to sea. It was about time, I thought, that I could make it. I thought I could.

Q Did you in fact go back to sea?

A I did.

Q To what ship were you assigned, sir?

A I joined the SS Constitution July 15th.

Q How many trips did you make on the Constitution?

A Two and a half.

Q Two and a half?

A Yes.

Q While on board the SS Constitution, directing your attention in point of time to, say, September of 1966, did anything unusual occur to you physically?

A Yes, sir, it did, sir. I began to have very bad chest pains again, and sweating.

MR. MANN: Excuse me. I object to this. Is he attempting to establish a causal relationship between these subsequent heart attacks and the accident?

THE COURT: Are you?

MR. ELLIS: May we approach the bench, your Honor?

(AT THE BENCH:

MR. ELLIS: I have been told by a medical witness, Dr. Johnson, or I expect him to be able to say this, that with respect to a person, a cardiac patient who has had two attacks, it is more probable that he will have a third one than a man who has had one.

THE COURT: What is the doctor prepared, though, to say the third attack was due to this trauma?

MR. MANN: If he says it, I will object to---

THE COURT: I will have to sustain the objection.

MR. ELLIS: He is not able to---

THE COURT: I will sustain the objection.

MR. ELLIS: But if I don't talk about it through this witness -- and I am just thinking ahead -- will not the doctor be able to give this?

THE COURT: I don't think so.

MR. ELLIS: --and let the jury infer---

MR. MANN: That's just my precise objection. If it is not reasonable medical certainty, I would object to discussing it.

MR. ELLIS: He would say it would be more probable -- not possible -- more probable that a person having had two---

MR. MANN: What does that mean? Does that establish there is a causal relationship?

27

MR. ELLIS: He had a third one.

MR. MANN: He had a first one before the accident.

MR. ELLIS: So, the second, we say, was definitely connected, and so maybe, he not having had the second, he probably would not have had the third, and the third was specifically---

MR. MANN: I will have to object.

THE COURT: Objection sustained.

MR. ELLIS: I won't push it. Very well.

(BACK IN OPEN COURT:

BY MR. ELLIS:

Q Mr. Bentley, when did you obtain your present employment, sir?

A June 1967.

Q So, you have been in the job something more than a year?

A Yes, sir.

MR. ELLIS: I believe that's all I have of this witness at this time.

MR. MANN: May I examine while seated here, your Honor?

THE COURT: Yes.

MR. MANN: May we approach the bench?

(AT THE BENCH:

MR. MANN: Am I right in my understanding that the

28 . plaintiff is not claiming any loss of earnings?

MR. ELLIS: He is not.

MR. MANN: And no permanent injuries, is that correct?

MR. ELLIS: The heart attack, the second one -- aggravation of pre-existing---

MR. MANN: But no permanent injuries, is that correct?

MR. ELLIS: You mean except that.

THE COURT: Except that?

MR. ELLIS: Except that.

MR. MANN: In all fairness, I would like to approach the bench on something like this: I know that Mr. Bentley has a record of bad driving, permit revoked for driving under the influence. I intend to ask him if he is a good driver and does he have a good driving record, and if he says "yes," I am going to ask has his permit ever been revoked.

MR. ELLIS: I don't think that's admissible.

THE COURT: I will sustain that objection.

MR. MANN: I will approach it another way. I will ask him if he was drinking the night of the accident. If he says "No," then I will ask him, "Do you ordinarily drink quite a bit?" If he says, "No,"---

THE COURT: You don't have any evidence to prove he

29 was drinking that night?

MR. MANN: Yes. The police officer will only testify that he smelled alcohol on his breath, that's all.

THE COURT: I think he can ask him if he was drinking that night.

MR. ELLIS: Oh, sure, I'll agree with that.

MR. MANN: If he says, "No," may I ask him if he ordinarily---

THE COURT: No, sir. You can then have the officer testify that he had alcohol on his breath at the time.

MR. MANN: When I took the deposition, he denied being a drinking man, and yet the hospital reports drinking excessively, right here at the top of the page here, "much drinking."

MR. ELLIS: Which hospital report?

MR. MANN: The Public Health Service.

MR. ELLIS: On some other occasion?

MR. MANN: Yes.

THE COURT: You better limit it to whether he was drinking that night.

MR. MANN: Thank you very much.

(BACK IN OPEN COURT:

CROSS-EXAMINATION

BY MR. MANN:

Q Mr. Bentley, referring to the night of December 29,

30 1965, at approximately 2:00 a.m., when you were driving the '63 Plymouth down Fourth Street, Northwest, you don't remember the accident; is that correct?

A That's very true, sir.

Q Have you had a history of transient loss of consciousness prior to this accident?

A Do you mean, do I black out?

MR. ELLIS: Objection, your Honor. May we approach the bench please, before we get too far in this area?

(AT THE BENCH:

MR. ELLIS: I think we ought to thrash this out now.

THE COURT: Why are you going into this?

MR. MANN: I was at the Freedmen's Hospital. The records very clearly state, "Patient admitted to history of transient loss of consciousness." He does not know whether he blacked out before or after the accident.

MR. ELLIS: If the Court please---

THE COURT: He doesn't know how this accident occurred.

MR. MANN: I realize that. I will withdraw that. I won't pursue it any further.

MR. ELLIS: Moreover, your Honor, I think the interpretation to be placed on this not possible I think "transient" means temporarily.

31

THE COURT: Well, he is not going to pursue it.

MR. MANN: I'm not going to pursue it, but it's in the record.

(BACK IN OPEN COURT:

MR. MANN: Your Honor, I'm sorry. May we approach the bench?

(AT THE BENCH:

MR. MANN: Out of my abundance of caution -- I'm not dreaming this up -- in the Freedmen's Hospital record (and you can interpret it however you want to) but I would like to ask him if he remembers being in the hospital, which he has already said he did, and this notation here in the hospital record says, "Patient thinks he might have been unconscious at the time."

THE COURT: I am a little unclear about this myself. Are you suggesting the possibility that Mr. Bentley suffered a black-out prior to the collision?

MR. MANN: Yes, sir. I don't know that to be a fact, but it's suspicious anyway.

MR. ELLIS: As I interpret that same hospital note, it's a history that's taken every time a person comes into Emergency. It's a question of interpretation. The doctors are going to say he suffered a cerebral and Officer Peterson is going to say he looked like dead when he was on the pavement, so there

32 is everything to infer he was unconscious as a result of the impact, and not the result of a black-out prior---

MR. MANN: These notes here bother me.

THE COURT: If you could establish that he suffered a black-out prior to the impact--- What do you have to do that with?

MR. MANN: What does a clinical note in a hospital record as follows mean: "Patient admits to history of transient loss of consciousness." What does that mean, I submit?

He says it doesn't mean anything. I say it means what it says.

MR. ELLIS: I think the note means, it's another phrasing of that particular note there. They apparently talked to Bentley sometime in the--- and he admitted that he might have been temporarily unconscious prior to having been brought in and caused by the impact.

THE COURT: I think it's too remote. I really do.

MR. MANN: I will respect your Honor's wishes. I will pursue it another---

(BACK IN OPEN COURT:

BY MR. MANN:

Q Mr. Bentley, did you personally pay the hospital bill at Freedmen's Hospital?

33

MR. ELLIS: I am going to object to that, if your Honor please.

THE COURT: Of course, there has been no evidence as to the Freedman's bill.

MR. MANN: Very well. I will withdraw the question.

BY MR. MANN:

Q Mr. Bentley, had you had any alcoholic beverages to drink at the card game?

A No, I did not, sir.

Q Do you recall when I took your deposition on February 21, 1967, Mr. Bentley, in my office?

A I recall the deposition in your office, sir, yes, sir.

Q I asked you, on line 8, I said: "Can you tell us what happened? How did the accident occur?"

And your answer was: "Well, I was traveling north on Fourth Street, and I was looking straight ahead, and I was hit."

I believe your testimony today was that you have no recollection of the accident, am I correct?

A That is correct, sir. I didn't mean to imply at that time, if I did, that I knew I was hit. It's a conclusion I drew, that I was hit.

Q On Line 18 that day---

MR. ELLIS: Give us the page number.

MR. MANN: Page 6, the bottom.

BY MR. MANN:

Q On Line 18, I asked you: "You did not look to the right or left?"

And your answer was: "I couldn't definitely say as to whether I did. I was looking straight ahead. I know I was looking straight ahead."

MR. ELLIS: I don't think that's a proper basis for attempting to impeach him. He has not stated anything like that today. The question was not put to him.

MR. MANN: That's just my point. He said nothing today.

THE COURT: I will overrule the objection. I'm not sure you have made the question--- Have you stated your question?

MR. MANN: I will read it, your Honor.

BY MR. MANN:

Q The question to you, Mr. Bentley, was, on line 18, page 6: "You did not look to the right or left?" And your answer on February 21, 1967 was: "I couldn't definitely say as to whether I did. I was looking straight ahead. I know I was looking straight ahead." Is that your testimony today?

A My testimony is, sir, that I was looking straight ahead. I saw no vehicle approaching. I remember nothing concerning that, having left whatever block this was on

35 Fourth Street and approaching the intersection.

Q You don't even remember the accident today?

A Not today, no, sir.

Q Do you recall seeing any police officers at the hospital, Mr. Bentley?

A I vaguely remember a blue uniform -- a white uniform -- but I was in terrific agony and pain, and that is all. Whether I was conscious or sub-conscious or half-conscious, I don't know. I know I was in terrific pain. My head was being sewn, and all I know is that it resembled, you know, a hospital room that I saw. I saw a white and blue yes, I do, sir.

Q Mr. Bentley, do you recall any police officer asking you for permission to take a specimen of urine?

MR. ELLIS: Objection. May we approach the bench?

(AT THE BENCH:

MR. ELLIS: I think, without some greater foundation, this is a highly prejudicial question.

MR. MANN: The police officer will testify, and as you well know, you were there at the deposition, that he asked him for permission to take a specimen of urine, and he refused.

MR. ELLIS: I don't think that agrees with the statement of the police officer on---

THE COURT: I don't agree. I think it is proper.

MR. ELLIS: On what basis? We haven't got any drinking.

THE COURT: That's the question. The officer said he did smell---

MR. MANN: He didn't say he was drunk but he said he smelled---

MR. ELLIS: This is something your Honor does not know, but I am prepared to show in the officer's deposition where he said he couldn't smell alcohol on the breath because the man had such a bad breath.

MR. MANN: I have two different transcripts---

MR. ELLIS: And it's a question of whether the transcript you offer of the Administrative Hearing at the Department of Motor Vehicles presided over by a layman -- This deposition was not held for purposes of discovery. The hearing officer was a layman.

MR. MANN: Revoked his permit, though.

MR. ELLIS: It was immediately restored. I don't think that's a proper foundation for him to impeach -- the testimony of the officer. I don't think that's admissible. If you put that in, I'm going to put that in. It will make the officer look bad. In this case, the officer categorically said, "I could not smell alcohol on his breath, and I bent down to try and smell, because his breath was so bad, I couldn't stomach it."

37

MR. MANN: He said he did smell it. That's not right, Mr. Ellis.

MR. ELLIS: I don't think, under those circumstances, this testimony about taking a urine specimen is appropriate. The officer is going to back-track or something.

MR. MANN: The officer testified he asked for permission and it was refused, and Mr. Bentley said all he wanted was his lawyer.

MR. ELLIS: I think before we can get to that, if we can get to that, there ought to be some believable testimony about drinking.

THE COURT: Do I understand the officer will testify that he did ask permission to take a urine test?

MR. MANN: I will show you the officer's deposition, the question and answer.

THE COURT: And Mr. Bentley refused to?

MR. ELLIS: But there was a reason.

THE COURT: I will overrule the objection.

(BACK IN OPEN COURT:

By MR. MANN:

Q Mr. Bentley, I want to ask you this question again: Do you recall a police officer at the hospital the night of the accident asking you for permission to take a specimen of your urine, and you refused him? Do you recall that?

38

A No, sir, I don't.

Q Do you wear glasses, Mr. Bentley?

A Yes, sir, I do, sir. Not all the time.

Q Do your driver's license require that you wear glasses?

A No, sir.

Q Did you have on glasses the night of the accident?

A No, sir.

Q Are you familiar with the area of Fourth and W Streets, Northwest, Mr. Bentley?

A I am, sir.

Q Could you tell us from memory, if you know, is the roadway level or upgrade, downgrade or what the characteristic of the roadway is, traveling on Fourth Street, from V to W?

A I would call that level.

Q What about the lighting conditions? Do you have any idea, seeing at night, if you know?

A No.

Q You have no idea?

A No, sir.

Q Mr. Bentley, I don't want to ask you a needless question, but I did not understand you a while ago: Do you recall the address of the place where you played poker that night?

A The actual address, no, sir, I don't. I mean by that,

39 I recognize the building, according to a geographical setting, the building next to it, and so forth. I can give you an approximate answer as to that, but not the definite address, no, sir.

Q Do you know the names of any of the people that were playing in the game with you?

A The people who were playing in the game with me, sir, were people, waiters and bartenders who, over the years, I have seen on one occasion or the other one. So, just to come to the indication of who was there on that particular night, it's too many people to draw from. It was an active place, you know, the public coming and going; so I couldn't identify them personally, no.

Q Have you ever received, since the accident -- and I refer to the time since September of '66 when you had, and correct me if I am wrong, your third heart attack, September of '66, is that correct?

A That's correct.

Q Have you drawn any disability compensation from your job?

MR. ELLIS: Don't answer.

What's the purpose?

MR. MANN: Only to show that he has drawn it from his employment.

THE COURT: I don't think it's material to this case.

MR. MANN: I'll withdraw it, your Honor.

BY MR. MANN:

Q Have you ever received any previous injury to your neck other than on December 29, 1965?

A Yes, sir, I had.

Q When was it, Mr. Bentley?

A It was around 1957 and 1958.

Q How did you receive it?

A I was working in the First-Class Dining Room of the SS Independence, and another waiter with a hot tray, hot silver tray of lobsters collided in the back of me, and burnt my neck, yes, sir.

Q Did you receive medical treatment for that, sir?

A Yes, I did, sir.

Q I'm sure you've answered this question, but were you employed at any time during 1965 before the accident?

A No, I was not, sir.

MR. ELLIS: Objection. I would like a proffer from Mr. Mann as to the materiality of that in this case.

THE COURT: There is no claim for loss of wages, in this case as I'm aware.

MR. MANN: Very well, your Honor. I'm sorry.

BY MR. MANN:

Q Mr. Bentley, prior to this accident on December 29, 1965, do you recall, had you ever previously taken, in 1965,

41 a drug known as Lufa -- L-u-f-a?

A Yes, sir.

Q You do recall taking it?

A Yes, sir.

Q Had you ever taken one called Comadine prior to the accident?

A I have stated that, yes, sir.

Q Do you recall ever taking one known as Butasol?

A Yes, I do, sir.

Q Do you ever recall taking one known as Dicumerol?

A No, sir, I don't.

MR. MANN: Your Honor, I have no further question.

THE COURT: Any redirect, Mr. Ellis?

REDIRECT EXAMINATION

BY MR. ELLIS:

Q Mr. Bentley, for what condition did you take the Lufa?

A Lufa is said to lower cholesterol. Cholesterol is fat inside the veins.

Q You were taking it because of the heart condition?

A Yes, sir.

Q What about Comadine?

A Blood thinner for heart condition.

Q Butasol.

A As a sort of tranquillizer.

Q For what condition?

A For heart condition.

MR. ELLIS: Thank you.

THE COURT: Anything further?

MR. ELLIS: No, your Honor.

Your Honor, may I consult counsel?

THE COURT: Yes,

MR. ELLIS: Thank you your Honor.

(Counsel conferred off record.)

MR. ELLIS: May we approach the bench?

(AT THE BENCH:

MR. ELLIS: I was asking Mr. Mann if he were in a position to stipulate to the hospital bill. This is what I got. I don't want to bring it to the jury.

MR. MANN: My client will kill me, but I will do it.

MR. ELLIS: It's verified, this is the total.

THE COURT: You want this letter received?

MR. ELLIS: No, I don't think so.

THE COURT: But you want to stipulate to the amount and you will stipulate?

MR. MANN: Yes.

MR. ELLIS: Thank you, your Honor.

(BACK IN OPEN COURT:

MR. ELLIS: May I make that announcement?

THE COURT: Yes.

MR. ELLIS: Ladies and gentlemen of the Jury:

It has been stipulated by counsel and approved by his Honor that the amount of the hospital bill which was incurred by Mr. Bentley for his care and treatment there on and after December 29, 1965 was in the total amount of \$1,431.07.

As his Honor will tell you, you may consider this as evidence being in the case now because it was agreed to and stipulated to by counsel.

MR. ELLIS: Your Honor, my next witness will be the police officer.

(Witness excused.)

THE COURT: As I understand it, he may be testifying for some little time. Am I right?

MR. ELLIS: Yes.

THE COURT: What is the name of the officer?

MR. ELLIS: Officer Peterson. I just wondered if this would be a convenient time for recess.

MR. MANN: I will be 20 or 30 minutes in Cross.

THE COURT: I don't like to lose the 15 minutes.

MR. ELLIS: Unless we put on Mrs. Bentley to prove the value of the car.

THE COURT: You will have a little longer lunch hour than the usual. We will recess at this time until 1:45.

(Whereupon, at 12:18 p.m., the case was recessed to reconvene the same day at 1:45 p.m.)

- - -

THE COURT: Mr. Ellis, are you ready to proceed?

MR. ELLIS: If the Court please, may we approach the bench?

(AT THE BENCH:

MR. ELLIS: I called the Training Division and directed Officer Peterson to come back quarter to two. I see has has not arrived. I was going to ask permission -- and it might save time -- I would like to put the plaintiff back on for a limited purpose, to prove three small bills.

THE COURT: Is this the officer here now?

MR. ELLIS: That is he.

I want to make this request while we are here. I would like to put the plaintiff back for two or three things, for the hydroculator and the traction set. He had an EEG, \$25. and Dr. Barber who examined him nurologically, and Dr. Barber charged \$50. The examination was negative, and I won't be bringing Dr. Barber in and it adds nothing to my case.

MR. MANN: Maybe it wasn't necessary.

MR. ELLIS: He was referred by Dr. Epps.

THE COURT: He would so testify?

MR. ELLIS: I have a referral slip from Dr. Epps to Dr. Barber. I did not do it.

MR. MANN: All right.

THE COURT: Do you want to put him on again first before you call your officer?

MR. ELLIS: Yes.

(BACK IN OPEN COURT:

Thereupon,

CARL T. BENTLEY

plaintiff herein, was recalled for further examination and testified further as follows:

FURTHER DIRECT EXAMINATION.

BY MR. ELLIS:

Q Mr. Bentley, will you resume the stand please?

Mr. Bentley, in connection with certain injuries you suffered as a result of a certain collision December 29, 1968, were you requested to make the purchase of any equipment or appliances?

A Yes, sir, I was, sir.

Q What did you have to purchase?

A A hydroculator.

Q Tell us what that is?

A A hydroculator is something that holds heat for---

Q What else did you have to buy?

A Traction set.

Q Where did you use that, if you did?

A For my neck and the back of my neck.

46

Q Where did you use it?

A At home.

Q Under whose direction?

A Dr. Epps'.

Q Tell us something about this traction, what did it consist of and how did you use it?

A Well, you sat at a chair and you hooked it up on a door, and filled the water bag, and the weights, you know, pulled it down, pull your neck -- are supposed to exercise certain muscle to pull away, where the soreness was.

Q Did you in fact use this traction?

A Yes, sir.

Q For how long a period did you use this traction?

A I used this traction for about 5 or 6 weeks.

Q And you had to purchase this, sir?

A Yes, I did.

MR. ELLIS: Would you mark this Plaintiff's No. 1 for identification, please?

THE CLERK: Plaintiff's Exhibit No. 1, marked for identification.

(Plaintiff's No. 1 marked.)

MR. MANN: No objection, your Honor.

MR. ELLIS: I offer Plaintiff's No. 1 into evidence.

THE COURT: What does it show as an amount?

47
MR. ELLIS: \$23.12.

THE COURT: Is that for the hydroculator?

MR. ELLIS: And traction set.

THE COURT: Both.

(Plaintiff's Exhibit No. 1
was received in evidence.)

BY MR. ELLIS:

Q I show you what has been introduced as Plaintiff's No. 1. Will you tell us what that is, sir?

A Bill for Roger Surgical and Dental Supplies, 1516 Ninth Street, N.W.

Q What is it for?

A Hydroculator, \$4.95 and ---

Q What else?

A Traction, \$17.50.

Q Pursuant to any medical advise that you received, Mr. Bentley, did you have any tests or examinations performed for which you had to pay?

A Yes, I did.

Q Would you tell us what it was?

A I was sent to Dr. Jesse Barber for consultation.

Q Who referred you there?

A Dr. Epps.

Q Did he examine you, sir?

A Yes, he did, sir.

48 Q This was on the complaints of what?

A Well, I had a little forgetfulness -- and dizziness.

Q Did Dr. Barber charge you for his professional services?

A Yes, he did.

Q How much did he charge you, sir?

A \$50.

Q Did Dr. Barber send you anywhere for any examination in connection with his examination of you?

A Yes, he did, sir.

Q Where did he send you, sir?

A He sent me to the neurological lab on Canyon Street.

Q What type of examination did this neurological lab perform on you?

A It is known as EEG.

Q Did you have to pay for it, sir?

A Yes, I did.

Q How much were you charged for this particular examination?

A \$25.

MR. ELLIS: May this be marked as Plaintiff's 2 for identification, please.

THE CLERK: Plaintiff's Exhibit No. 2 for identification.

(Plaintiff's Exhibit No. 2 was marked for identification.)

49

MR. ELLIS: I offer Plaintiff's 2 into evidence,
there being no objection.

THE COURT: No objection, it will be received.

(Plaintiff's Exhibit No. 2 was
received in evidence.)

BY MR. ELLIS:

Q I show you what has been introduced as Plaintiff's
No. 2. What is that?

A Bill from Northwest Radioisotope and Neurological
Laboratory.

Q For what services?

A EEG.

Q How much does it indicate you were charged?

A \$25.

MR. ELLIS: Thank you.

I believe that is all I have of this witness.

THE COURT: Any cross?

MR. MANN: Just one question.

CROSS-EXAMINATION

BY MR. MANN:

Q Mr. Bentley, do you know the results of the electro-
encephalogram?

A No, I don't, sir.

Q You were told that it was normal?

A I was not told anything. I was not sent for further
treatment by the doctor.

50

MR. ELLIS: If the Court please, if it will be any help, I will stipulate that the results of the electroencephalogram were normal.

MR. MANN: All right, if you will. Thank you very much.

MR. ELLIS: Yes, indeed.

MR. MANN: I have nothing further.

MR. ELLIS: Nothing further.

THE COURT: You may step down.

(Witness excused.)

MR. ELLIS: Call Officer Peterson, please.

Whereupon,

JOHN A. PETERSON

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q Officer Peterson, may we have your full name and your occupation and duty assignment?

A My name is Private John A. Peterson, assigned to the Accident Investigation Unit, Metropolitan Police.

Q Is that your present assignment?

A It is my present assignment.

Q You are back with A.I.U.?

A I am officially assigned with A.I.U., student director

51 at the present time.

Q Let me ask you this. In December of 1965 were you so assigned? Were you police officer and assigned to Accident Investigation Unit?

A I was, sir.

Q In keeping with your duties at that time, Officer Peterson, did you have the occasion to investigate the collision at the intersection of 4th and W Streets, N.W. in the District of Columbia?

A I did.

Q Pursuant to subpoenas that were served on you and your office, did you bring with you any records, photographs, and memoranda concerning this accident?

A And notes I took at the scene and the photographs I took at the scene.

Q You have them with you?

A I have them with me.

Q Very well.

You said you did investigate the collision?

A I did.

Q How did you receive notice of this incident?

A I received a radio run while patrolling the District of Columbia, I believe, about 2:09 a.m. in the morning.

Q What time did you respond to the scene?

A If I could refer to my notes, I could be more precise.

52

Q You certainly may.

A This is the rough sheet which we use to take the information down, from the time we get the run to the time we complete it, which indicates we got the run at 2:09 a.m. and arrived at the scene approximately 2:20 a.m.

Q When you arrived at the scene, Officer Peterson, what did you first observe? First of all -- I will withdraw that.

There was placed on the blackboard before noon a certain diagram. Did you draw that, sir?

A I did.

Q Does this purport to be an accurate diagram or description of the intersection as you found it to be as a result of your investigation?

A The intersection as it was prior to the accident and since the accident has been cleared away.

Q Officer, if you don't mind, would you come down, go to the board and tell us what you saw when you first arrived?

THE COURT: Can you men see the lines on the board? It is not very distinct to me. I wonder if you would like to have it closer to you.

Mr. Anderson, you are indicating you can't see it very well.

Can all the rest of you see it all right?

MR. ELLIS: Maybe if we put it right at the end of counsel table, they could see it.

53

THE COURT: Does that satisfy all of you?

BY MR. ELLIS:

Q Now, Officer Peterson, if you would come to the board and use your pointer.

A The diagram indicates this is Fourth Street running north and south, W Street running east and west. It indicates here a stop sign, a building on the corner, with a wall on the northeast corner -- on the southwest corner a building.

On the northwest corner is a vacant lot with a fence around it. On the southeast corner is an apartment building.

Q Officer Peterson, you say it was approximately 2:20 a.m.?

A When I arrived.

Q What were the lighting conditions at this intersection?

A It is a well-lit intersection. There are two new-type -- I am not sure of the word they have for it -- new-type lights that overhang over the street so you have quite a bit of light.

Q What was the surface of the road?

A The surface was asphalt, good condition and dry and level at this point.

Q What were the weather conditions on this occasion?

A The weather was clear.

Q Upon arriving what did you see at and around the

54 intersection?

A When I arrived, there was an old model Plymouth partly up on the sidewalk in the northeast corner and partly in the street. There was a ---

MR. MANN: Could he draw that please?

MR. ELLIS: Yes, put that vehicle in and identify it by the initial of the owner.

THE WITNESS: The car was listed to C. W. Clewlow.

MR. ELLIS: Mark that. "C".

THE WITNESS: The other vehicles was in position up here.

BY MR. ELLIS:

Q Would you actually draft it in as you first saw it?

A As I first saw it, it was in approximately this position. These marks indicate here it was upside-down, lying on the top ---

Q This was whose vehicle?

A Bentley's vehicle and Mr. Bentley was lying in the street approximately this position. There was a body here and a body here (indicating) and the owner-- Mr. Roger L. Burnham was identified as being the operator of the Clewlow ---

THE COURT: Try to keep your voice up. I am having trouble hearing you.

THE WITNESS: Roger Burnham was identified as being the operator of Mr. Clewlow's vehicle by Mr. Clewlow, who was

55 first observed wandering in the area.

MR. MANN: Obviously you have got the names wrong.

MR. ELLIS: Mr. Hoffman.

THE WITNESS: Hoffman named as passenger -- Mr.
Hoffman.

BY MR. ELLIS:

Q Further setting the scene, Officer, would you give us the widths of the respective streets?

A I have them marked at the top. 39 feet for Fourth Street north of the intersection of W, and 34 feet from Fourth Street south of W, and W Street 24 feet.

Q Is W Street controled by any traffic signal or device?

A W Street east and west is controled by a stop sign.

Q They were positioned on this occasion?

A They were positioned on this occasion. The stop sign is 16 and a half feet west of the west curb.

Q Were you able to establish the point of cimpact from what you found at the scene?

A There was a mark in the street cut in the asphalt by the right front bumper of Mr. Clewlow's vehicle. The mark was made by the vehicle being forced into the ground by the impact, so I was able to establish that as the estimated point of impact. This was taken from the southwest corner, being 14 feet north and south, and 20 feet east of the west---

MR. MANN: I am sorry. Did you say 20 feet?

THE WITNESS: East of the west---

BY MR. ELLIS:

Q Officer Peterson, as a further result of the physical evidence and any other information that you received in connection with your investigation of this particular collision, did you discover the relative directions in which these vehicles were proceeding prior to impact?

By dotted line could you ---

A From the dirt and debris and from the physical damage on both vehicles, they indicate that Bentley's vehicle had been proceeding northbound, did continue afterwards into the curblane on up further to where it wound up in an upside-down position.

MR. MANN: Your Honor, I am going to have to object. This officer has not been qualified as being an expert at accident construction.

MR. ELLIS: This wasn't my purpose in asking the question, if the Court please. I simply wanted him to tell us if he could -- reconstruct the scene, tell us which way the automobiles were going.

MR. MANN: I will object to that.

THE COURT: I think the objection is proper. I will sustain the objection.

BY MR. ELLIS:

Q Did you receive any information in any form as to ---

MR. MANN: I object, on the ground of hearsay.

57

THE COURT: Objection sustained.

BY MR. ELLIS:

Q You did not view the accident so you don't know in which direction the vehicles were proceeding, is that right?

A Except through the damage of the vehicles and the physical evidence on the scene.

He can
THE COURT: testify to what damage was done to the two vehicles if he can do so.

BY MR. ELLIS:

Q As a result of your personal observation -- these vehicles were damaged, is that right?

A Both damaged.

Q How would you describe the damage to, first of all, the Clewlow vehicle -- light, moderate or heavy?

A Heavy damage to the Clewlow vehicle.

Q How would you describe the Bentley machine damage -- mild or ---

A Heavy, very heavy.

Q With respect to portions of the respective vehicles damaged, what was the portion or portions of the Clewlow vehicle damaged?

A That was the front portion from the initial impact and right front fender, pulled to the right and almost pulled off.

Q Was this full front, as you were able to observe?

58

A Full front.

Q What portion or portions of the Bentley vehicle did you observe to be damaged?

A Bentley vehicle. The initial impact damage was caused to be the left front fender and front door.

Q Officer Peterson, would you get the pictures.

A (Examines photographs.)

Q I guess these two best represent what you just testified to, do they?

A Right.

Q Are there any in here that better show what you just -- are there any of these that show damage to the vehicle?

We will have them marked at one time.

A There are some marks on these previous times. I don't know whether they should be remarked.

MR. NANN: I believe I marked them when I took the officer's deposition or had them marked.

MR. ELLIS: I guess we had better remark them. Would Your Honor want them 1, 2, 3, 4?

THE COURT: I think we might as well call them 1, 2, 3, 4.

MR. ELLIS: May this be marked 3 for identification, and this one be marked 4. May this be marked 5 for identification, this one 6, this one 7, this one 8, and this one 9.

THE CLERK: Plaintiff's Exhibits Nos. 3 thru 9 marked

59 for identification.

(Plaintiff's Exhibits Nos. 3 - 9
were marked for identification.)

MR. ELLIS: Mr. Mann says he has no objection. Accordingly I ask Plaintiff's Exhibits 3 thru 9 be introduced in evidence.

THE COURT: Let Officer Peterson identify them.

MR. ELLIS: Oh, yes, I am sorry.

BY MR. ELLIS:

Q Would you look at these photographs, Plaintiff's Exhibits for identification 3 thru 9, and tell us if you recognize them and what they are -- can you recognize them and identify them?

A These are photographs I took at the scene of the accident and they are marked on the back by the Accident Investigation Unit and given a photograph number. All photographs taken are filed according to number and, in turn, we can refer to them for location.

Q You personally took those photographs?

A I did.

Q Did you take them at the scene upon your first visit?

A When the ambulance was there when I first arrived -- this is to get the injured people -- and then the photographs were taken.

Q And these are the official police photographs of

60 this investigation?

A They are.

THE COURT: Can you tell the jury what they are, Mr. Peterson, using the exhibit number on that yellow tab, not your number but the Court number?

THE WITNESS: I will start with the lowest number. No. 3 is a photograph of the northeast corner, with the Clewlow vehicle partly up on the sidewalk. There is a woman walking behind it. Apparently that was not part of the accident scene. There is a marking of the roadway where I indicate the mark of the bumper, and that's basically what it is.

It shows damage and approximate point of impact of the accident.

THE COURT: Let's have the next one. What's the next one?

THE WITNESS: No. 4 is Mr. Bentley's vehicle at the final resting place, looking back down the street to where Mr. Clewlow's vehicle was. It is not visible in the background because of the lighting conditions.

No. 5 is the right side of Mr. Clewlow's vehicle, indicating damage to hubcap and damage to the door where it ---

MR. MANN: Did you say the Clewlow vehicle?

THE WITNESS: --- the Bentley vehicle collided with the curb, showing damage to the door where it flipped over.

No. 6 is a closeup of the damage to the Clewlow vehicle

61 front.

No. 7, once again street scene showing the northeast corner and the Clewlow vehicle on the curblane.

No. 8, the uprighted vehicle of Mr. Bentley, showing the side damage where the vehicle was struck.

No. 9, a street scene looking from the center of the street approximately where the accident took place to the resting place of the two vehicles.

THE COURT: Without objection they will be received and you may turn them over to the jury now to observe.

(Plaintiff's Exhibits Nos. 3 - 9
were received in evidence.)

MR. ELLIS: I have some others. Do you want it done piece-meal?

THE COURT: No. Do you have some other photographs you are offering?

MR. ELLIS: May this be marked for identification 10, and this No. 11, this No. 12 and this No. 13 and this No. 14, No. 15 this one, No. 16 and the last one 17.

THE CLERK: Plaintiff's Exhibits 10 thru 17 are marked for identification.

(Plaintiff's Exhibits Nos. 10 - 17
were marked for identification.)

THE COURT: Do you have objection to them?

MR. MANN: It would all depend. His Honor asked if

62 I had any objection to those. It would all depend on the purpose. I think they accurately portray the physical scene. Other than that, I would submit ---

MR. ELLIS: This is my only purpose for offering them.

THE COURT: Since that is the only purpose, you have no objection?

MR. MANN: No.

MR. ELLIS: May they be received?

THE COURT: Yes.

(Plaintiff's Exhibits Nos. 10 - 17

were received in evidence.)

THE COURT: Let Mr. Peterson identify them.

MR. ELLIS: No. 10 was taken for the purpose of showing the corner from which both operators proceeded into the intersection. The stop sign is indicated.

MR. MANN: I would object to that. It shows no such thing, Your Honor.

THE COURT: Yes, I will sustain the objection to that conclusion of the officer. It just shows the intersection, is that correct?

THE WITNESS: It shows once again the southeast corner of the intersection.

THE COURT: All right.

It will be received for that purpose.

MR. ELLIS: No. 11.

THE WITNESS: No. 11 is a photograph northbound on Fourth Street after the vehicles were removed.

MR. MANN: No objection.

THE COURT: No. 12.

THE WITNESS: No. 12 is eastbound on W Street -- once again after the vehicles were removed.

MR. MANN: No objection.

MR. ELLIS: No. 13 is ---

THE WITNESS: Get ^{myself} misoriented -- it is southbound on Fourth Street -- southbound.

MR. ELLIS: No. 14.

THE WITNESS: Is the intersection -- I am not positive of what corner it is.

MR. MANN: As long as it just portrays the intersection, I have no objection.

MR. ELLIS: 15.

THE WITNESS: Is once again northbound on Fourth Street.

MR. ELLIS: 16.

THE WITNESS: 16, the northeast corner after the vehicle was removed and the mark in the roadway by this manhole cover.

MR. ELLIS: No. 17.

THE WITNESS: No. 17 is westbound, looking in toward

64 Fifth Street.

MR. ELLIS: May these be circulated?

MR. MANN: No objection.

THE COURT: I understand there is no objection to any of them. Will you put them in order from 3 thru 17, respectively?

MR. ELLIS: They are in order, Your Honor.

THE COURT: Will ^{you} hand them to No. 1 juror.

The jury may proceed to examine them and pass them to the other members of the jury. As you inspect each photograph, will you pass it down to the next juror, starting with No. 3.

Let me say this to you members of the jury, after you get the case, if you want to look at these photographs later, you have the right to do so. You have the right to have them sent for your consideration.

Mr. Ellis, you may proceed.

BY MR. ELLIS:

Q Officer Peterson, I believe you told us earlier in your testimony that when you arrived at the scene, among other things, you observed Mr. Bentley lying in the roadway and you indicated by an X mark, which is positioned just about midway of Fourth Street north and intersection of W?

A That is correct.

Q When you first observed Mr. Bentley, did you form any opinion about his physical condition?

65

MR. MANN: I would object to it. The officer is not a doctor, Your Honor.

BY MR. ELLIS:

Q Was he lying in the street, sir?

A The three people in the street were lying motionless.

Q This included Mr. Bentley?

A Yes, sir.

Q Were you there when Mr. Bentley was taken or left the scene?

A I was there when he was taken into the ambulance.

Q Taken to the ambulance, left the scene by ambulance? He did so, as far as you saw?

A So far as I saw.

MR. ELLIS: I think that is all I have of this witness.

THE COURT: Any cross, Mr. Mann?

CROSS-EXAMINATION

BY MR. MANN:

Q Officer Peterson, just one thing. I am not criticizing your drawing, I couldn't have done as well, but is it not true that Fourth Street is 10 feet wider than ^{is W} ~~Fourth~~ Street and -- they look about the same -- is that not true?

A That is true. I have got 34 on the southern end of ~~Fourth~~ Street and 24 on W Street.

THE COURT: In other words, the drawing is not to scale.

THE WITNESS: Not to exact scale, no, sir.

BY MR. MANN:

Q How many lanes wide is Fourth Street?

A Fourth Street north of the intersection?

Q I am talking about at the intersection and prior to the intersection.

A I am trying to explain -- coming south on Fourth Street, you start out in the block with four lanes of traffic. It reduces to one lane southbound and two lanes northbound. On the south end of the intersection there are three lanes, one southbound and two northbound.

Q Were any cars parked in any of those lanes -- well, specifically the night in question.

A When I arrived, there were no cars parked and to the best of my knowledge there is no parking in that area on Fourth Street.

Q And speaking in terms of lanes, the point of impact would be in the middle lane of Fourth Street if you continued on north, is that correct?

A Not in the right lane, in the center lane.

Q After you investigated the accident did you go to the hospital?

A I first went to Freedman's and then to Washington Hospital Center.

Q You first went to Freedman's?

67

A That is correct. I say, to the best of my knowledge.

Q How long after the accident did you go to Freedman's, in minutes?

A It was a considerable time. I had taken the time to take the measurements, to take the photographs, to have the cars removed from the scene, to take additional photographs, and I estimate at a minimum, an hour or an hour and a half.

Q Had you been advised two boys were dead on arrival?

A I had been advised by that time.

Q That's the reason you went to Freedman's, is that correct?

A That is correct. It was also the closest hospital.

Q Did you talk to Mr. Bentley when you got to Freedman's Hospital?

A I did.

Q Do you recollect any specific questions you asked him? You may refer to your notes.

A I have a series of questions I normally ask ---

MR. ELLIS: I am going to ask ---

THE COURT: Do you recall the questions?

THE WITNESS: And I did ask these questions.

BY MR. MANN:

Q What were those questions?

A I asked Mr. Bentley the direction he was traveling and his answer was, "I feel too bad to answer." I went on to

68 ask him how fast he was traveling. He told me, "I told you I feel too bad to answer questions."

Q What other questions?

A I asked him -- I don't have this written down, but I did ask him if he had been drinking, because I did smell alcohol.

Q You did smell alcohol ---

A Yes.

Q --- on Mr. Bentley's breath?

A Yes, so far as I am concerned.

Q Were there any tests made at the hospital, to your knowledge?

A None whatsoever.

Q Did you try to have any made?

A I asked the hospital staff ---

MR. ELLIS: I think we ought to identify ---

BY MR. MANN:

Q What tests did you ask to be made?

A I asked -- and I can't identify the person because I couldn't get their names -- whether they would make a blood test or urinalysis at the hospital.

MR. ELLIS: I am going to object to any response. It is certainly hearsay.

THE COURT: I will sustain the objection, so far as the response of the hospital attendant may be; but does he have

69 a response by Mr. Bentley? Did Mr. Bentley make any response, as far as you know?

THE WITNESS: Mr. Bentley refused to answer any questions.

BY MR. MANN:

Q Do you recall your testimony at a hearing held on March 16, 1966?

MR. ELLIS: Excuse me. I interpose an objection. I think we ought to come to the bench.

(AT THE BENCH:

MR. MANN: This is reported by shorthand reporter Richard C. Forney. It is on page 5 at the top of the page.

THE COURT: Tell me what it is.

MR. MANN: --in which he says, "In further conversation with him about drinking, when asked whether he would submit to a urinalysis, he stuck with the answer that he was in too much pain to talk, although he continued to answer questions of the X-ray technicians and doctors."

THE COURT: I will sustain the objection.

MR. ELLIS: I find myself in this position, while we are here: The officer testified differently in the deposition than he has just responded.

MR. MANN: I think it is your interpretation. I didn't get any difference.

MR. ELLIS: I am not talking about your question.

THE COURT: You may cross-examine.

MR. ELLIS: That is all I want to establish.

MR. MANN: I want to ask him if he asked -- I won't ask him point blank. Did he ask Mr. Bentley if he would submit to a urinalysis test?

THE COURT: You may ask him that.

(End of Bench Conference.)

BY MR. MANN:

Q Officer Peterson, at the hospital that night, did you ask Mr. Bentley if he would submit to a urinalysis test?

A I will say, yes, I am sure I did.

Q What did he reply, if you know?

A His exact reply I don't recall.

Q Did he submit to it?

A He did not.

MR. ELLIS: Well, I think -- if he knows. I don't know if the officer is qualified,

THE COURT: As far as you know, there was no urinalysis made?

THE WITNESS: There was no urinalysis test made, no, the usual report on file with the Police Department.

MR. MANN: Indulge me for a moment.

BY MR. MANN:

Q Officer, from the point of impact, did you see any

71 signs on the Bentley vehicle to indicate that it came in contact with anything other than the Clewlow vehicle?

A As one of the photos indicates, it came in contact with the curb.

Q Could you point out, if you saw any marks there that would identify which part of the curb it was that it came in contact with?

A The damage to the hubcap was identical to the shape of the sewer drain, which is a metal edge of the drain on the curb-line, which is just behind the rear of the Clewlow vehicle. There was sewer drain there.

Q I see what you mean, but I am not sure -- is it north of the Clewlow vehicle there or south?

A North of the Clewlow vehicle there was a sewer drain. The sewer drain has a metal edge where it met on both ends with the concrete. This metal edge extended a little bit, an inch or two higher than the curbline. This metal edge and the damage to the hubcap were identical to the size as far as the metal edge would make that type of mark.

Q Do your notes indicate, Officer, how far from the initial point of impact as determined by you, to where the Bentley vehicle came to rest on its bottom side up, did it travel in? How many feet?

A In a straight line from where?

MR. ELLIS: Excuse me. I object. I think Mr. Mann

72 is attempting to elicit from the officer the very testimony he objected to on ---

THE COURT: No. As I understand it, you want to know the distance from the point of impact and where the Bentley vehicle came to rest.

MR. ELLIS: But this vehicle being straight in line ---

THE COURT: Let's eliminate the straight line. How far from the point of impact was the Bentley vehicle when ---

THE WITNESS: To be precise, what I am calling the estimated point of impact is where I found marks in the roadway which I identified to be the bumper mark from the Clewlow vehicle. From this point to the point where the Bentley vehicle is, drawn on the map, is a distance of 79 feet.

BY MR. MANN:

Q 79 feet?

A 79 feet.

MR. MANN: May we approach the bench, Your Honor.

(At the Bench:)

MR. MANN: I have a problem that I want to let Your Honor tell me what to do.

I realize that he has not been qualified as an expert nor do I want to qualify him as an expert.

THE COURT: You objected to him as an expert.

MR. MANN: I stick with it. On the other hand, he has certainly seen quite a few accidents and I want to ask him what

73 usually happens when cars of comparable weight and size, when one strikes the other -- what happens to them. I know the answer, they go to the right several feet. This time they did not.

MR. ELLIS: He is obviously not qualified.

THE COURT: I will sustain the objection.

(End of Bench Conference.)

THE COURT: You may resume the stand, Mr. Peterson.

BY MR. MANN:

Q Officer, you may have already answered this. I didn't jot it down.

Was it your testimony that the intersection was well-lit?

A It was.

Q Oh, that's right. You mentioned a new kind of light. Mercury vapor ---

A Mercury vapor.

Q The stop sign on W Street going east is located 16 and a half feet back from what I call the curbline, is that right?

A That is correct.

Q And the point of impact, then, would be 20 feet into the intersection going east, correct?

A Approximately.

Q And 14 feet into the intersection going north?

A Approximately.

THE COURT: In both instances you are measuring from the curbline?

THE WITNESS: In both instances I am measuring from the southwest corner, the reason being there is a five-foot offset on the north side of the street.

BY MR. MANN:

Q That building line -- I have forgotten the photograph -- that's 22 feet back from the -- I am talking now about the southwest corner.

A As the stop sign is 16 and a half feet west of the west curb, the building line facing Fourth Street is 22 feet west of the west curb.

Q In other words, in that area there is nothing to obstruct the view from either W or Fourth Street, correct?

A Well, my photograph of that corner shows a small tree, if I can recall it correctly, but that is not an obstruction as far as ---

Q It is very small?

A It's a small tree with a fire fence to the best of my recollection, and also shows the stop sign, if I can recall correctly.

Q At the hospital, did Mr. Bentley ask for anyone that you heard?

A I don't recall. There was conversation between him and the X-ray technician ---

75

Q Don't tell us that conversation.

A But I don't recall exactly what ---

Q Do you recall being in my office, Officer, when I took your deposition on March 13, 1967?

A I recall being there for the deposition.

Q And I refer to page 23 of that deposition, line 22, and I ask you:

"Q Did he ask for anyone?" And you answered:

"A He asked for his wife, because he wanted his wife to call a lawyer."

Does that refresh your memory?

A As far as I recall.

MR. ELLIS: If the Court please, I am not satisfied this is proper impeachment. The Officer simply said he does not now recall. He didn't deny having said ---

THE COURT: I will overrule the objection.

Do you recall giving that testimony, Officer?

THE WITNESS: This is, in fact, very familiar to me. I think that is precisely the words he said.

BY MR. MANN:

Q Now, on top of page 24, line 2 -- strike that.

You have previously testified you smelled liquor on his breath, is that correct?

A That is correct.

Q Did he appear, other than that, to have been drinking?

A He appeared to be in surprisingly good physical

76 condition, considering what he had just been through. He was resisting being X-rayed and through these actions I was under the assumption that he had been under the influence.

MR. ELLIS: I am going to object to this conclusion.

THE COURT: I will sustain the objection and instruct the jury to disregard that last answer.

BY MR. MANN:

Q May I see your rough sheet, Officer Peterson?

A (Hands document to counsel.)

Q I notice down at the bottom of your rough notes, some initials -- AOTB. Can you tell us what they mean?

MR. ELLIS: Just a second. I object. First of all, I think it should be established whether or not the officer placed them there himself. Those are his rough notes. I think we ought to establish that first.

THE COURT: Are they yours?

THE WITNESS: These are my rough notes. It is not an abbreviation I normally use and I ---.

MR. ELLIS: May I approach the Bench? This is very critical.

THE COURT: I will sustain the objection.

(At the Bench:)

MR. ELLIS: We know for a fact that Officer Peterson put these initials he is about to refer to on his own rough notes. This was revealed in his deposition. He says they were

77 placed there by someone else. He does not know who. But he told us what they usually stand for.

But inasmuch as they are his rough notes -- he has stated he has not put them there himself:

THE COURT: You agree he didn't put them there?

MR. MANN: No, I don't. There were two officers who were there and either one is capable of making notes on their rough notes.

THE COURT: Yes, but this officer did not write it.

MR. MANN: It means "alcohol on the breath," is what the abbreviation stands for. I will withdraw the question.

THE COURT: O.K., that settles it.

(End of Bench Conference.)

THE COURT: You have no objection to a witness being in here?

MR. MANN: I have just one or two more questions.

THE COURT: All right, take your time.

BY MR. MANN:

Q Officer Peterson, when you examined Sidney Clewlow and Roger Burnham when you arrived at the scene, did you detect any signs of life?

A No, I didn't.

MR. MANN: No further questions.

THE COURT: Do you have any redirect?

MR. ELLIS: One or two.

BY MR. ELLIS:

Q Officer Peterson, when you answered the question of Mr. Mann with respect to any damage that you found on the Bentley vehicle, which perhaps would coincide with some object that you found in the street, did you reach the decision this damage resulted before or after impact when you say "It struck some object"?

A There again it would be my opinion ---

MR. MANN: I object.

THE COURT: I am not sure I heard the question. What is the question?

MR. ELLIS: Mr. Mann had asked Officer Peterson, as I recall, whether or not he observed any damage on the Bentley vehicle which would indicate it had struck something other than the Clewlow car, and then there was this testimony about the sewer drain and I simply want to know if it was before or after the impact.

MR. MANN: He was not there. He couldn't testify.

THE COURT: I sustain the objection.

BY MR. ELLIS:

Q But the sewer drain about which you refer is several feet north of the north curb of W Street?

A That is correct.

Q I think you further indicate, Officer Peterson, that as one proceeds north on Fourth Street, he is permitted to travel

79 in two lanes in this portion -- that is, south and north -- and for one proceeding south on Fourth Street, he is restricted to one lane; is that correct?

A That is correct.

Q Would you mind stepping to the board, Officer Peterson, and approximately show as best you can how these lines are marked?

A Two of my photographs showing north and southbound traffic would, I believe, show the marking in the street.

Q I mean simply the white line -- where would the white line be approximately?

A (Marking) My recollection would be there was a solid line for one line of traffic and a broken line for two lanes of traffic.

North of the intersection it would start with two lanes of solid line cutting into a single lane and then giving two lanes northbound and continuing all the way up.

Q Thank you. You may proceed to the witness stand.

Officer Peterson, I appreciate, of course, that it has been some time since the accident and you have had other duties since then, but I would like to query you, if I may, respecting the testimony regarding odor of alcohol on the breath of Mr. Bentley.

You have already told Mr. Mann that you remember having had a deposition ---

MR. MANN: Excuse me, Your Honor. Is he going to impeach his own witness?

THE COURT: I think he may do so.

BY MR. ELLIS:

Q You have already told us that you recall having been deposed in Mr. Mann's office, I believe, on March 13th, 1967, regarding this particular incident, and do you recall on that occasion, Officer Peterson, having been asked whether or not you had smelled alcohol on the breath of Mr. Bentley? Do you recall having been asked that question?

A I presume I was asked that question.

Q Do you recall having made this response? I am referring to page 24 of this deposition:

"I approached the man myself and I tried to get close enough to the man to smell his breath and he had extremely bad breath, so I couldn't verify that it was alcohol. The breath was too bad to stomach."

Do you recall ---

MR. MANN: May we approach the Bench?

MR. ELLIS: Do you recall having said this?

THE COURT: No.

THE WITNESS: I believe that's what I said.

THE COURT: Now if you any further questions, you may ask.

RE-CROSS-EXAMINATION

BY MR. MANN:

Q Now, Officer, when you said that, you were referring to when you first got to the scene, not at the hospital, were you not, when you gave that answer that he just referred to?

A I could not be sure.

Q If you know -- did you smell the odor of alcohol on Mr. Bentley's breath at the hospital?

A To the best of my recollection, yes.

Q And you have testified that he did appear to have been drinking, is that correct?

A That is correct.

MR. MANN: No further questions.

FURTHER REDIRECT EXAMINATION

BY MR. ELLIS:

Q Officer Peterson, did it subsequently come to your attention, sir, that Mr. Bentley was admitted to the hospital?

A It did.

Q Didn't you tell us at this same deposition, sir, that in your judgment, based on Mr. Bentley's appearance ---

THE COURT: If you have got the page, refer to the answer, Mr. Ellis.

MR. ELLIS: Let me first ask him this.

BY MR. ELLIS:

Q Did Mr. Bentley appear to be hurt when you first

82 observed him in the street?

A When I first observed, he appeared to be unconscious.

Q And for a while there, sir, you weren't certain that he was alive?

MR. MANN: I object to that speculation.

THE COURT: Overruled.

BY MR. ELLIS:

Q Isn't that so?

A Yes, it is so.

Q When you first saw the three bodies, you quickly made the speculation all three were dead?

A All three were possibly dead.

Q Did you see him being administered to in emergency room treatment?

A I saw the X-ray technicians trying to position him so they could X-ray him.

Q Did you see him downstairs -- did you see anybody messing up his head?

A No, I didn't.

Q Did you ever form an impression based on what you saw that he was an injured man?

A There was no question in my mind that he was not injured -- he was definitely injured.

Q But despite this opinion, you are able to tell us, sir, are you, that you felt that he had been drinking?

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A . Despite that, yes.

Q And you just answered Mr. Mann's question that -- your present testimony is that in your judgment you smelled an odor of alcohol on his breath in the hospital, is that right?

A To the best of my recollection.

Q You heard me read to you what your answer was ---

THE COURT: Mr. Ellis, you have already done that. You have already done that.

MR. ELLIS: Very well, I will let that stand. That is all.

MR. MANN: No further questions.

THE COURT: You are excused.

(Witness excused.)

You gentlemen want him to remain any longer or may he be excused.

Very well. Thank you, Mr. Peterson.

MR. PETERSON: The photographs, I presume, will be returned to the Police Department?

THE COURT: Right after they have served their purpose here, they will be turned into the Police Department.

MR. ELLIS: If the Court please, at this posture would it be appropriate for us to take a five-minute recess, to permit me to speak with this medical witness so he can get on and off?

THE COURT: Yes, about how long will be necessary?

MR. ELLIS: I wouldn't expect it to be very long.

THE COURT: We will take a brief recess.

(Whereupon, a brief recess was taken.)

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(Following the recess, testimony of Dr. John B. Johnson was reported, but was not transcribed per instructions from counsel.)

Thereupon:

MR. ELLIS: Your Honor, I have run out of witnesses for the day. I honestly tried to get an additional doctor down here and thought he was coming.

THE COURT: Are you going to have Mrs. Bentley testify? Might as well.

MR. MANN: May we approach the bench?

(AT THE BENCH:

MR. MANN: What is Mrs. Bentley going to testify to?

MR. ELLIS: She owns the car.

MR. MANN: That's all? That alone is meaningless if insurance is involved, and I know that it is.

MR. ELLIS: It does not matter. In keeping with our conversation, I checked my clients' collision insurance. Their collision insurance had expired; liability was in force but collision had expired, as a consequence of which, they were required to pay the lienholder.

THE COURT: Who was required?

MR. ELLIS: Yes, Mrs. Bentley, in the sum of about

\$800-\$900. They did receive from their liability carrier \$75. salvage.

85 MR. MANN: You can't drive a car in the District without either insurance or otherwise paying in, can you?

MR. ELLIS: It can expire, though.

MR. MANN: Very well.

MR. ELLIS: Your Honor, I can do this, too: I can put her on for that purpose and I would like to offer certain traffic regulations at this time.

THE COURT: Let's do that. Who will you have tomorrow?

MR. ELLIS: The rest of my doctors, Dr. Leffall, Dr. Blackwell, Dr. Epps. I will have these three nurses come to testify as to their bills, these private-duty nurses, and I will have a Mr. Charles Gaither who is going to give us the blue-book value on that car. He is an auto salesman with Jack Blank New Car Dealer.

THE COURT: Let's put Mrs. Bentley on and offer your traffic regulations.

(BACK IN OPEN COURT:

MR. ELLIS: Mrs. Bentley, will you take the stand, please?

Thereupon,

MILDRED G. BENTLEY,

a plaintiff herein, was duly sworn, and having been examined testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q Mrs. Bentley, may we have your full name and your present address for the record, please?

A Mildred G. Bentley, 4660 Nichols Avenue, Southwest.

Q You are one of the plaintiffs in this case, are you?

A Yes, I am.

Q Are you married to Carl T. Bentley?

A Yes, I am.

Q Were you married to Carl T. Bentley on December 29, 1965?

A Yes, I was.

Q On this particular date, Mrs. Bentley, did you own an automobile?

A Yes, I did.

Q Would you describe for us the model, year and make of the automobile?

A It was a 1963 Plymouth Fury.

Q How many doors, 2 or 4?

A Four doors.

Q Do you remember the color?

A Light green.

Q On this occasion on December 29, 1965, was your automobile operated by your husband, Carl T. Bentley?

A Yes, it was.

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Q As a result of an incident which occurred on that date, did anything happen to that automobile?

A Yes, it did.

Q What happened to it?

THE COURT: She does not know what happened to it.

She was not there.

BY MR. ELLIS:

Q Were you subsequently informed about the condition of your car?

A Yes, I was.

Q Did you ever see it thereafter?

A Yes, I did.

Q When did you next see it?

A I saw it at the---

Q I did not say where; I said when, in point of days.

A The following day.

Q The following day?

A The following day.

Q What condition was the car in when you saw it?

A The roof was caved in, the side door on the driver's side was jammed in. It was, to me, a wreck.

Q On December 29, 1965, Mrs. Bentley, was that car paid for?

A No, it was not.

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Q Incidentally, how much did it cost you when you purchased it?

MR. MANN: I would object to that.

THE COURT: I will sustain the objection.

BY MR. ELLIS:

Q Was the car paid for?

A No, it was not.

Q Did you ultimately pay for the car?

A Yes, I did.

Q To whom did you pay?

MR. MANN: I object.

THE COURT: Objection sustained.

BY MR. ELLIS:

Q Do you recall approximately how much you were required to pay for this automobile?

MR. MANN: I object.

THE COURT: Objection sustained.

MR. ELLIS: If the Court please---

MR. MANN: It could have been a loan made the day before the accident, and maybe---

THE COURT: I have already ruled on it. I have sustained the objection.

MR. ELLIS: That's all I have of this witness.

THE COURT: Do you have any cross-examination?

MR. MANN: No, your Honor.

THE COURT: Very well. You may step down.

(Witness excused.)

THE COURT: Do I understand the only thing remaining is this matter of traffic regulations -- that is all you can do today?

MR. ELLIS: Yes, sir.

THE COURT: Then, Members of the Jury, we are going to excuse you until tomorrow morning.

Unfortunately, as I told counsel for both parties, I have had another matter scheduled for hearing in this Court at ten o'clock tomorrow morning. It's been scheduled for over a week, and I have to proceed with it. I don't think it will take over an hour.

I am going to excuse you until 11 o'clock tomorrow morning.

(Jury excused from courtroom.)

THE COURT: What are these traffic regulations on which you rely?

MR. ELLIS: The ones I would like to offer at this time, your Honor, are: Number 10.

THE COURT: What is that on?

MR. ELLIS: Obedience to traffic signs or devices. Does the Court want me to read it?

THE COURT: I think I know what it is.

88-b

MR. ELLIS: Failure to yield right-of-way,

Section 48.

I don't know whether I am being premature now, but I would ultimately, before I close my case in chief -- 99 (c), Full Time and Attention.

MR. MANN: I have the same one.

THE COURT: You're asking for the same regulations?

MR. MANN: Yes.

THE COURT: Very well. I will grant request for 10, 48 and 99 (c). And I think, since both sides are relying on them, perhaps it would be more fair if we merely say I will receive them in evidence, and in my charge to the jury, I will read the three regulations to the jury, and say they were offered by both sides. It is for the jury to determine to whom they apply.

MR. ELLIS: They have been received at this point?

THE COURT: They have been received.

Do we have anything else today?

MR. ELLIS: Unfortunately, that's all we can do today. The rest of my witnesses are going to be medical. I would expect them to be as brief as Dr. Johnson. Then there will be the three nurses. They will be in and out just to testify to their bills.

Mr. Gaither will testify as to the value of this

88-c automobile, and that would be my case, so far as testimony is concerned.

MR. MANN: What is the Blue Book value?

MR. ELLIS: Retail \$1200, three, no, two years old.

MR. MANN: I'll stipulate to that.

THE COURT: In other words, you'll stipulate that the value of the Plaintiff's automobile at the time of the accident was \$1200?

Do both sides agree with that?

MR. MANN: Yes.

THE COURT: Very well.

MR. MANN: I won't stipulate she sustained that loss, but I'll stipulate that that's the fair book value.

THE COURT: How many witnesses are you going to have, Mr. Mann?

MR. MANN: Your Honor, I plan to have five witnesses.

THE COURT: Then, we'll go over to Monday, won't we?

MR. MANN: There is a possibility we might not, but I would certainly---

THE COURT: I think we probably will. I will be glad to cooperate with you in closing the evidence tomorrow, if we can. I doubt if it can go to the jury tomorrow.

MR. MANN: I agree.

88 (d) THE COURT: Do either of you have any prepared instructions yet, or are you going to rely on me?

MR. ELLIS: For the great part, I can rely on your Honor. There may be one qualifying instruction that I will want, I may have to hand-draft.

THE COURT: All right. We'll deal with that tomorrow.

MR. ELLIS: I'll rely on the Red Book.

MR. MANN: I'll have some tomorrow.

THE MARSHAL: Court stands adjourned till ten o'clock tomorrow morning.

(Whereupon, at 3:55, the above-named case was recessed to reconvene at eleven o'clock the following morning, October 18, 1968.)

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P R O C E E D I N G S

11:a.m.

THE COURT: Do I understand counsel want to take something up?

MR. ELLIS: I would like to take this up before we have a jury. Referring to the testimony yesterday of Officer Peterson, questions propounded by Mr. Mann and answeres elicited with respect to whether or not the officer asked Mr. Bentley to submit to a urine specimen, and Mr. Bentley's response, I would respectfully submit to the Court that any reference to this is clearly inadmissible, and I move the Court accordingly to strike the question and the answer, and to instruct the jury accordingly.

The basis for my motion is Title 20, Section 609 (a) of the District of Columbia Code, that's your "driving under the influence" statute. Referring to Section E of 4609 (a), this, of course, sets forth the offense of driving under-the-influence, and Section E says, Nothing in this section shall be construed to require any person to submit to the withdrawal of blood, the taking of urine specimen from him or a breath test."

In the notes of the decision to this particular sub-section, there is a case out of the D. C. Court of Appeals, Stuart vs. District of Columbia, 1960, 157 Atlantic Second, 294. In that particular case, the D.C. Court of

90 Appeals said, in part: "In view of the fact the D. C. sobriety test Statute gives a right to refuse the test, the accused's refusal to take the test was explained and justified, and the refusal was not admissible in a prosecution for driving under the influence of intoxicating liquors."

I would like to draw an analogy with this particular statute, and of course, an accused's right not to make an incriminating statement.

For example, suppose a police officer approaches a defendant and says, "Did you rob that bank?" and the defendant says, "I refuse to answer," and at a subsequent trial on those charges, the police officer is permitted to testify that he asked this question and got this response. Obviously, this is not admissible, and of course, the reason is that there is no obligation on the part of defendant to make the answer. And of course, any response, irrespective of what it is, is prejudicial.

I submit the same thing is true here. Under the authority of statute, Mr. Bentley or anybody else has the right to refuse to submit to a urine specimen. There is no obligation to give it; and of course, his refusal of it is not admissible in evidence because it would be highly prejudicial because there was no obligation for him to give it in the first instance; and the fact he refused, he was doing something;

91 he had a right to do. For those reasons, if the Court please, I would ask the Court to strike that testimony, the question and answer, and that the jury be specifically instructed that there was no obligation on the part of Mr. Bentley to submit to a urine specimen. Accordingly, he had the right to refuse, and they should disregard whatever answer or answers that Officer Peterson gave, because the only purpose for Mr. Mann attempting to elicit this testimony from Officer Peterson was to demonstrate that Bentley made an admission against his interests. That would be the only basis for the admissibility of testimony in any admission against one's interests. I submit this was ^(not) because there was no obligation on Mr. Bentley's part to answer or submit later.

THE COURT: What do you say, Mr. Mann?

MR. MANN: If a bank robber sues the bank, I admit then we have a different situation. We are not trying to sue Mr. Bentley or trying to prove the criminal offense of driving under the influence. He is the plaintiff in this case, this action, and therefore the truth is very fundamental; and I would submit that the officer testifying that he smelled alcohol on his breath, and being asked if he would submit to a urine test is certainly pertinent, ~~mundane~~ ^{fundamental}

92 to the very issue in this case. He is the plaintiff, not us.

THE COURT: I'm not sure I am following you. My understanding was that I permitted you to ask the officer about it because you had asked Mr. Bentley if he had refused to submit to a urine test.

MR. MANN: That's true.

THE COURT: And he denied it.

MR. MANN: That's the second point.

THE COURT: I permitted it, therefore, because I thought it impeached his testimony. I admitted it for that purpose.

MR. ELLIS: I think Mr. Bentley's answer was, "I don't recall."

MR. MANN: He said, "I did not" specifically.

MR. ELLIS: He is attempting to get an admission from Mr.--- I don't see how we can waive Mr. Bentley's statutory right.

THE COURT: I don't agree with you, Mr. Ellis. I will deny your motion.

THE COURT: Do we have anything else to take up before the jury comes?

MR. ELLIS: No, sir.

THE COURT: Are you ready to go forward?

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PLAINTIFF calls Richard Hoffman.

MR. MANN: May we approach the bench?

(AT THE BENCH: The Complaint does not charge, and there is no evidence to show that any beer, a bottle of beer consumed by any of these boys had any effect on the driver of this automobile. I would object to any question, and if he asks him a question about a beer, I will object; but of course, that will implant^{it} in the minds of the jurors, so I would request that Mr. Ellis be instructed to ask him no questions about a beer.

MR. ELLIS: On what basis, Mr. Mann?

MR. MANN: Because the autopsy report, as you well know, showed that liquor was not a factor, as far as the
98 driver of the car was concerned -- had nothing to do with it. Therefore, I object.

MR. ELLIS: Don't have to refer to the autopsy report. If, of course, the evidence indicates there was some ingestion of alcohol--and Mr. Hoffman indicated in the deposition -- I'm prepared to offer, or I am not prepared to be bound by his answers as long as he is my witness on direct. So, I don't plan to ask him those questions at this time.

MR. MANN: I just looked at a '68 case where it said, "No question could have such effect except to open to the minds of the jurors an improper, speculative excursion

outside the issues developed by the pleadings."

MR. ELLIS: I could say, it is a two-edged sword. I move any evidence about Mr. Bentley's ^{condition} cross-examination be disallowed.

THE COURT: I will overrule your objection.

MR. ELLIS: I don't want him for that purpose now.

(BACK IN OPEN COURT:

Thereupon,

RICHARD HOWARD HOFFMAN

was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. ELLIS:

Q Mr. Hoffman, may we have your full name and your present address please?

A Richard Howard Hoffman, 606 Timber Lane, in Falls Church, Virginia.

Q Directing your attention, Mr. Hoffman, to the evening of December 29, 1965, did you have the occasion to be in the company of one Sidney Clewlow and Roger Burnham?

A Yes, sir.

Q Were the three of you riding in an automobile?

A Yes, sir.

Q To whom did that automobile belong, if you know?

A Sidney Clewlow.

Q Do you recall, sir, at some time in the evening or early morning hours having been involved in a very serious collision?

A Yes, sir.

Q Do you remember where that collision took place?

A In Washington, on about Fourth and W Streets.

Q In what quadrant of the City, North, East, South, West?

A I know it was in the Northwest. I don't know too much about Washington.

100 Q You don't know exactly what section of the City , but you know it was 4th and W?

A Yes. Right.

Q Who was in the vehicle at that time just prior to the impact, if you remember?

A Myself, Sidney Clewlow and Roger Burnham.

Q Who was driving the automobile at that time?

A Roger Burnham.

Q Where were you seated, sir?

A In the front seat, on the right-hand side.

Q Where was Sidney Clewlow seated?

A In the back seat.

Q I direct your attention, Mr. Hoffman, to a diagram that appears on the blackboard here, which diagram was

placed there by a police officer who investigated this collision, and which diagram counsel for both sides have admitted is reasonably correct and accurate, so far as what it depicts, the measurements and so forth.

May I ask you to come down from the stand, and go up to the board and simply look at it and familiarize yourself with this intersection. I might indicate the arrow indicates North. (Indicating) This has been demonstrated as being Fourth, and this has been indicated as being W Street. If you want to take a moment to orient yourself, that would be fine.

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THE COURT: Do you recognize it all right, Mr. Hoffman?

MR. ELLIS: Do you recognize it as being the intersection where the collision occurred?

THE WITNESS: Yes, it looks like an intersection.
I mean---

BY MR. ELLIS:

Q Do you recognize it as being the intersection where this collision occurred? This is Fourth, and this is W (Indicating).

A Yes, at 4th and W.

Q Do you want to resume the stand, sir?

A Yes.

Q You were sitting in the right, the passenger seat

up front, is that right, sir?

A Yes.

Q Do you recall there having been a Stop Sign at the intersection of W Street and Fourth?

A Yes, sir.

Q On which street was your vehicle travelling?

A W Street.

Q In which direction on W Street were you traveling, east or west?

A East.

102 Q Was there a Stop Sign controlling eastbound traffic on W Street on this occasion?

A Yes, sir.

Q Did you see it there on that night?

A Yes, sir.

MR. ELLIS: Thank you. That's all I have.

THE COURT: Do you have any cross-examination at this time, Mr. Mann?

MR. MANN: No.

THE COURT: You may step down, Mr. Hoffman, but don't leave because of course, you are going to be called back later on.

(Witness temporarily excused.)

MR. ELLIS: In the remaining time, not having heard from Dr. Lefall, there is some documentary evidence I would like to offer.

THE COURT: You may offer your documents.

MR. ELLIS: If the Court pleases, Mr. Mann has agreed to stipulate with me that the vehicle which was operated by Roger Burnham on December 29, 1965 and had as occupants Sidney Clewlow and Richard Hoffman, was owned by the defendant Carl Clewlow.

THE COURT: Do you so stipulate?

MR. MANN: I so stipulate.

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THE COURT: Further that it was being operated with Mr. Clewlow's permission?

MR. MANN: I will so stipulate that it was being operated with Mr. Carl Clewlow's permission by Roger Burnham.

MR. ELLIS: I would like to offer in evidence at this time, your Honor, and this is simply a verifax copy, Title 40, Section 424 of the D.C. Code. It's the Financial Responsibility Law in the District of Columbia.

THE COURT: The Court takes judicial notice of the Code.

MR. ELLIS: I would ask it be received.

THE COURT: The Court takes judicial notice of the Code.

MR. ELLIS: This is all I can offer at this time before lunch. I will make every effort over the luncheon recess to see what the availability is to get Dr. Leffall.

THE COURT: Do your best to have him here at 1:45.

MR. ELLIS: He is under subpoena shortly after October 4. I was advised yesterday he was out of town. He returned overnight and was engaged in surgery this morning, and I am in contact with his office.

THE COURT: We will take a recess at this time until 1:45 p.m.

(At 12:20 p.m., the case was recessed to reconvene at 1:45 p.m. the same day.)
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THE COURT: Mr. Ellis, are you ready to proceed?

MR. ELLIS: Thank you, your Honor.

Counsel have stipulated to certain matters I would like to bring to the attention of the Court. First of all, it has been stipulated between counsel that Miss Barbara J. Halloway was a private-duty nurse who also attended Mr. Bentley during his period of hospitalization at Freedmen's Hospital in 1966, and that the value of her services and the bill submitted by her is in the amount of \$120. I would ask this to be marked.

THE COURT: That is so stipulated?

MR. MANN: Yes.

THE COURT: Very well. They will be so received.

MR. ELLIS: Plaintiff's Exhibit 26 is offered in evidence.

THE COURT: It will be received in evidence as part of plaintiff's case.

(Plaintiff's Exhibit 26 was received in evidence.)

MR. ELLIS: Secondly, it has been stipulated the report and bill of Dr. Leffall, who was the surgeon who managed Mr. Bentley's case at Freedmen's Hospital. His 105 report and bill have been stipulated to by counsel. I would ask that they be marked as Plaintiff's Exhibit No. 27 for identification.

THE COURT: They will be marked and received in evidence as Plaintiff's Exhibit 27 and the report may be read to the jury to reflect that if the doctor was present, he would testify as the report indicates. Is that correct, Mr. Mann?

MR. MANN: Yes, sir. No objection.

MR. ELLIS: The report is dated October 31, 1967 addressed to myself and it's signed by LaSalle D. Leffall, Jr., M.D.

"Dear Mr. Ellis:

The above patient was admitted to Freedman's Hospital on December 29, 1965 after having received multiple injuries in an automobile accident. He received multiple fractures of the ribs, 5 on the left and one on the right, lacerations of the scalp and face, fracture of the distal left tibia, probable injury to the

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Attached to this letter is a bill from Dr. Leffall for hospital care from 12/29/65 through 2/9/66 in the amount of \$400.

One further stipulation, I believe: It has been stipulated between counsel that the value of the 1963, 4-door Fury Plymouth owned by the plaintiff, Mildred Bentley at the time of this collision on December 29, 1965 was valued in the amount of \$1200.

MR. MANN: I so stipulate.

THE COURT: Very well.

MR. ELLIS: If your Honor will just permit me to look over my sheet, I will let you know if---

THE COURT: All right.

MR. ELLIS: One further bit of documentary evidence, if the Court please.

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(AT THE BENCH:

MR. MANN: Your Honor, I may be wrong, but I respectfully submit that the only evidence that in any way connected any of those second heart attacks was the second heart attack.

MR. ELLIS: That's all.

MR. MANN: And since there is no permanent injury, I would object to anything like the light treatments.

MR. ELLIS: I think the doctor indicated there is death of tissue in the heart muscle.

MR. MANN: Death of tissue with the first heart attack too, before this accident. I would strongly object to that.

THE COURT: I don't think there is any evidence of permanent injury in the case. I will sustain the objection.

MR. ELLIS: Despite that, there is aggravation of a pre-existing heart condition in the form of a second heart attack which resulted in death of the heart muscle which is permanent, with resulting scar tissue, which is also permanent. The pre-trial order permitted the admission of the mortality tables.

THE COURT: If there is evidence to support it, but I don't know of any evidence to support it.

MR. ELLIS: I think it is reasonable for a jury to infer somebody with two hearts -- or perhaps he may live
108 as long as---

MR. MANN: You asked the doctor not to even read from the third and fourth heart attack.

MR. ELLIS: I did not. No. In all fairness to your position, sir.

THE COURT: I will sustain the objection.

(BACK IN OPEN COURT:

MR. ELLIS: I believe that's the plaintiff's case.

THE COURT: Are you ready to proceed, Mr. Mann?

MR. MANN: Your Honor, I would appreciate if the

jury could be excused. I would like to take up a matter with the Court.

THE COURT: The jury will be excused.

(Jury were excused from the Courtroom.)

MR. MANN: Your Honor, at this time, I would like to move for a directed verdict for the defendant on the grounds that the Plaintiff has failed to establish a prima facie case.

If your Honor will indulge me, I was jotting down just what the evidence has shown up to the present time. I would submit that the Plaintiff's evidence has shown that there was a collision on 4th and W Streets at about 2:00 a.m. on December 29, 1965. I would submit that the evidence has shown that one of the automobiles involved in the collision was a 1963 Plymouth Fury, 4-door sedan, owned by Mrs. Mildred Bentley
109 and operated by the plaintiff, Carl T. Bentley.

Further, that the evidence has shown that Roger Burnham, deceased, was driving an automobile owned by the defendant, Carl W. Clewlow, and that in addition to Roger Burnham being killed, the defendant's son, Sidney M. Clewlow was deceased; that both vehicles sustained considerable damage; that Mr. Bentley was found on 4th Street north of W Street and was removed to Freedmen's Hospital; that Roger Burnham and Sidney Clewlow were likewise found on the streets, dead on arrival; that Richard Hoffman was found wandering and dazed in the vicinity, and was removed to Washington Hospital Center; that Mr. Bentley sustained injuries

of fractured ribs, fracture to the right ankle, and while in the hospital, suffered a second heart attack; that Mr. Bentley was unemployed at the time of the accident, recuperating from a previous heart attack; that he had been to a poker game in the vicinity of T Street, and had participated in a poker game with persons not known, and that he was driving from the poker game to his home and was traveling north on 4th Street, and that he was looking straight ahead; that he does not recall whether he looked to the right or left; he remembers seeing nothing; does not remember the collision; and that the next thing he knew, he was in Freedmen's Hospital.

The evidence likewise shows that the odor of alcohol was smelled on his breath at the hospital by the
110 police officer, and that he appeared to the police officer to be under the influence of alcohol. The evidence shows that.

I would submit, your Honor, that based upon that there has been no showing of a prima facie case in any way, and of course, as your Honor well knows, the plaintiff has the burden of establishing by a preponderance of the evidence that there was at least some negligence on the part of the defendant; and in this case, I would submit that, taken most favorably to the plaintiff, there is nothing for the jury to consider.

The prima facie case has not been made out, because if you take everything -- if I am correct in what I told your Honor, and I have not deliberately tried to mislead --

THE COURT: I am sure you have not deliberately done it, but have you overlooked that there was a Stop Sign at 4th and W which was 16 feet back from the side of 4th Street, and the accident occurred about 20 feet into the intersection, and 20 feet to the south curb line of W Street, and that the automobile operated by Bentley was hit on the left side and the automobile operated by the driver of the Clewlow automobile---

MR. MANN: No, sir, but I would submit in answer to that, your Honor, that there may not be any inference of negligence drawn from the mere happening of an accident.

THE COURT: There is more here than the mere happening
111 of an accident in this case. I am not ruling on it as a trier of the facts; I am ruling on it as a matter of law whether there is enough to go to the jury. It seems to me that the jury can find from the evidence that there was a violation of the traffic regulation, and that that violation was a proximate cause of the accident.

I have given this a great deal of thought, frankly, after Mr. Bentley testified and said he had no recollection, could give us no help as to how it happened. It posed quite a problem with me as to whether or not the plaintiff had made out or would be able to make out a prima facie case.

I have studied it very carefully since the trial started, and I am of the opinion that it is a jury question. I will deny your motion.

MR. MANN: Thank you.

I would like to call, after the jury gets back, as my first witness, Mr. Richard Hoffman. I have Dr. Ammerman coming at 2:30, so I may have a little lag there between. I don't know how long I will be with Mr. Hoffman, but I may have five or ten minutes.

THE COURT: If there is, I will accommodate you. We will work these things out as best you can. If you still have not finished with Mr. Hoffman when Dr. Ammerman comes, it may be possible to suspend his testimony so Dr. Ammerman will not be kept here needlessly. I am sure counsel will agree to that. Bring the jury in.

(Jury resumed places in the Jury Box.)

THE COURT: Mr. Hoffman, will you resume the stand? Thereupon,

RICHARD HOWARD HOFFMAN

called as a witness on behalf of Defendant, was reminded he was under oath and testified as follows:

THE COURT: You understand that you have already been sworn in this case. You need not be sworn again.

THE WITNESS: Yes, sir.

THE COURT: The testimony which you now give will also be under oath. Do you understand that?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. MANN:

Q Mr. Hoffman, you have already given us your name and address. What do you do as your occupation?

A I go to school, university.

Q Where do you go to school?

A University of Virginia.

Q Directing your attention to December 28th in the afternoon, let's say around 6 o'clock is early enough, can you tell his Honor and the ladies and gentlemen of the jury where you were, what you were doing?

A Yes. I had been out that afternoon with Sid.

113 Q Who is "Sid"?

A Sidney Clewlow, and we went out to -- we went out to see some friends.

Q Don't be nervous. Be completely relaxed.

A It's kind of hard.

Q The jury and his Honor want to hear you so speak slowly. Your testimony was that you and Sid had been to see some friends, and what did you do? What time was that? When did you get back home?

A Well, we had been out for the afternoon seeing friends and we went to get the battery replaced on the car, and then went to get something to eat, and didn't get back until about 6:30 or 7:00 o'clock. I ate dinner around then.

Q Did you eat dinner at home?

A Right. Then, I don't know -- nothing special until I got a telephone call from Sidney Clewlow that -- I didn't have anything to do that night. He wanted to know if I would like to go to a get-together with some kids who were friends of

Mr.-- who were the children of friends of Mr. and Mrs. Clewlow, and he said he was going to call Roger Burnham and ask if he wanted to go.

Q Then what happened?

A I got ready to go and Sid came down to my house and waited around there for a few minutes or so till I got completely ready. Then, we went over to Roger Burnham's house and stopped in there for a few minutes.

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Q Before I forget, let me interrupt you: You testified you and Sid, as you called him, had been out that afternoon to get a battery. Was that a battery for Sid's car?

A That's correct, yes.

Q Can you describe the car?

A It was a 1953 Plymouth.

Q Could it have been '54?

A '54 -- 1954 Plymouth, dark green, and was in good running order.

Q Was it a 2-door or 4-door?

A 4-door.

Q And you got a new battery for it?

A Yes.

Q Do you know how many miles the car had on it?

A Oh, 24,000, somewhere around there. It belonged to a neighbor of the Clewlow's who took pretty good care of it.

Q Was in good condition?

A Good condition; had new tires on it.

Q Had new tires?

A Correct.

Q What time did you and Sid Clewlow pick up Roger Burnham?

A I guess around 8:30 or so.

115 Q What did you do when you picked up Roger?

A We waited at his house for a little while and then picked him up and went to this party on MacArthur Avenue, MacArthur Boulevard.

Q Do you know where the get-together was? Do you know the names of the people?

A Yes, I know it, but I can't remember.

Q Does the Mannings refresh your recollection?

A The Mannings.

Q Do they have teen-age sons?

A They had a girl.

Q Teen-age girl?

A Right.

Q And do you recall, Rick, what time you all got to the Manning's residence?

A About 9 o'clock.

Q What did you do when you got there?

A Well, it was a get-together for friends. We were some of the oldest there. Well, Sid's little sister was there. She must have been about 16. It was a dancing-type party,

food, et cetera. They had the phonograph on when we got there -- dancing.

Q Who drove to get there?

A Sidney.

116 Q To your knowledge, was Sidney going to do anything the next day, if you know?

A Yes. He hadn't had much to eat that night. He was scheduled for some minor type surgery the next day.

Q Do you know what kind of surgery?

A Removal of something. I can't remember exactly what it was.

Q Well, you were there and got there around 9 o'clock, right?

A Right.

Q Were there any refreshments served?

A Yes. They had all sorts of food there that Mr. and Mrs. Manning, I guess, provided.

Q Were the parents, the Manning mother and father, there?

A Yes, they were there. There were a couple of adults there, too, friends of theirs that I did not know.

Q And you danced?

A Right.

Q This December 28, 1965, how old was Sidney Clewlow?

A He was 18.

Q 19 -18?

A 19, right.

Q How old was Roger Burnham?

A He was a year behind us -- 18.

117 Q How old were you?

A I was 19. It was my birthday; December 28 was my birthday. I was 20.

Q Do you know what time you left the Manning residence off MacArthur Boulevard, Northwest?

A Yes. About 12:30 or 1:00 o'clock.

Q Between 12:30 and 1:00 o'clock?

A Right.

Q Who left with you?

A A girl friend of Sid needed a ride home so he offered to take her home.

Q Do you know who it was?

A Spicer, Elaine Spicer was her name.

Q Who was driving when you left the Manning home?

A Roger Burnham was.

Q Where were you seated?

A I was in the front seat on the right-hand side.

Q Where was Sidney Clewlow seated?

A In the back seat.

Q And Miss Spicer?

A Right.

Q In the back seat?

A Right.

A 19, right.

Q How old was Roger Burnham?

A He was a year behind us -- 18.

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A In the back seat.

Q And Miss Spicer?

A Right.

Q In the back seat?

A Right.

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Q Isn't it true---

MR. ELLIS: Objection.

THE COURT: No.

BY MR. MANN:

Q Can you tell us what street off of MacArthur Boulevard the Mannings live on?

A No, I can't. It's not too far off MacArthur Boulevard.

Q You were attempting to back-track because you knew how to get home from the Manning residence, is that correct?

A Correct -- well, from MacArthur Boulevard.

Q And you became lost. Did you stop and ask anybody?

A Yes, we stopped at an Esso Station, and I don't know the address of that either. I just remember it was on a busy city street in Washington, an Esso Station; and they gave us directions that we tried to follow for a while, but we got lost again.

Q Do you recall being on W Street, Northwest?

A Yes. We were lost and in unfamiliar territory. Right about then we were looking at all the street numbers and streets trying to figure out how to get to---

Q Did there come a time when you were on W Street approaching the intersection of 4th Street, Northwest?

A Yes.

Q Can you tell us what happened when you were still on

120 W Street traveling east, approaching 4th Street?

A Approaching 4th Street?

Q Yes, sir.

A There was a Stop Sign. We were going fairly slowly anyway, since we were lost and did not know exactly where we were going. We stopped at the Stop Sign and started out at the intersection. There again, that's when the accident happened.

Q When did you first notice the vehicle that you came in contact with?

A When we were out in the intersection. It was a cold night, and the windows were rolled up. You couldn't hear anything. We just saw the lights after we were out there in the intersection.

Q How far were you out in the intersection when you first saw it?

A Half-way.

Q And how far away was the car whose lights you saw at the time you first saw it?

A Not very far away.

Q How far -- using the courtroom?

A Not the distance of the courtroom.

Q Well, how far?

A Half-way.

Q Half-way?

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A Right.

Q Were you able to form an opinion--- Do you drive?

A Yes, sir.

Q Were you able to form an opinion as to the speed of the vehicle coming toward you?

A 50 to 60 miles an hour.

Q Are you sure of that?

A Well, I have been driving six years. I can gauge it accurately.

Q Think carefully on this one, Rick: If you know, was this a gearshift car you were riding in?

A Right.

Q Was the car in second gear or high or low gear?

A No, we had just shifted; it was shifted into low gear from the Stop Sign-out into the intersection; hadn't been shifted to second gear.

Q Do you know how fast you were going at the time you first noticed the other car?

A Well, we had stopped and then we just started off and had just gone a matter of feet, so, it would be 5 or 8 miles an hour, somewhere around there.

Q Were your headlights working properly?

A Yes, everything in the car worked fine.

Q You are absolutely positive you stopped at the Stop Sign?

A Yes.

Q Did the vehicle coming towards you, did you hear any brakes being applied?

A No.

Q Did the car swerve or take any evasive action?

A No.

Q You're positive of that?

A Yes, sir.

Q What's the next thing you remember?

A I just remember seeing stars and then everything sort of vague -- little things happened. I was not too lucid after that until I got to the hospital. It was only when I got in the hospital that I started to remember everything.

Q Now, Rick, is that all you know about the accident?

A Yes.

MR. MANN: You may inquire.

MR. ELLIS: Would the Court indulge me a minute while I take a look at the statement?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. ELLIS:

Q Mr. Hoffman, you told us that earlier in the day, December 28, 1965, you and Sidney Clewlow had spent the afternoon visiting friends, is that right?

A Yes, sir.

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Q Was that over in the Virginia area?

A Yes, sir.

Q And also during the afternoon, you had gone to some repair place to see about a battery for the Clewlow car?

A Yes, a garage in the Seven Corners Shopping Center.

Q Is that in Virginia also?

A Virginia. Right.

Q You described for us the Clewlow vehicle as being one in excellent condition, is that right?

A Yes.

Q Had you driven it before?

A Yes.

Q On how many occasions?

A Once I drove it back from a Tops Drive-In restaurant at one time.

Q How long before the happening of this occurrence had you driven Mr. Clewlow's car -- in what days, weeks or months?

A A week, I would say.

Q About a week before?

A Right.

Q Do you have any mechanical skills---

A No.

Q --as far as automobiles are concerned?

A None.

Q How is it you happened to know the car had 24,000 miles on it?

A I remember it seemed like such a good bargain for an old-type car.

Q Had the car been recently purchased by the Clewlow's prior to the time of this collision?

A Yes, in the fall, I think.

Q In the fall. When did you first notice the mileage on the vehicle?

A I never noticed the mileage as such; I just remember Sidney saying that for a 1954 car, 24,000 miles isn't too much.

Q He told you that when?

A When it was purchased.

Q Is that right?

A Yes.

Q Did you have the occasion to observe the condition of the tires just prior to this incident?

A No, but I know that it had two new tires on it.

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Q How do you know this?

A Because he had just bought new tires for the car.

Q Did you see the tires on the vehicle at any time?

A I didn't get down on my knees and inspect them, but I figured new tires were---

Q How far distant did you negotiate this car when you operated it on this occasion? How far did you drive it?

A Just through Falls Church, not very---

Q How much distance would you say that would be?

A About a mile, maybe a little more.

Q In 1965, Mr. Hoffman, were you a licensed operator?

A Yes.

Q How long had you been driving at that time?

A I got my license when I was 16 -- 3 years.

Q At that time, you had been driving 3 years?

A Right.

Q And it was your opinion the car was in excellent running condition, good condition, like a new car and 24,000 miles in December 1965?

A Yes.

Q You and your companions went to this party on MacArthur Boulevard that evening, is that right?

A Yes, sir.

Q And there was food there?

A Yes, sir.

Q Let me ask you this: What type of beverages were they serving?

A Soft drinks.

Q Is that all?

A Yes, sir.

Q That's all the family provided?

A Yes, sir.

Q Did you see---

MR. MANN: I object to this line of questioning.
I don't see what it has to do---

THE COURT: Objection is overruled.

BY MR. ELLIS:

Q Did you observe the presence of any beverages other than soft drinks at the Manning residence on this evening?

A Yes, sir.

Q What did you observe?

A One 6-pack of beer.

Q One 6-pack of beer?

A Yes.

Q Who had it?

A We bought it.

Q We? To whom do you refer?

A Sidney Clewlow, Roger Burnham and myself. But after

127 we got there, we found it wasn't that type of party, so we decided---

Q You have answered my question. Please don't bother to explain.

A Oh!

Q Incidentally, who bought the beer?

A I did.

Q Where did you buy it, sir?

A In Washington.

Q Where in Washington?

A Some delicatessen out that way.

Q Do you know what section of Washington?

A Yes, on the way.

Q That's not telling us much.

A Well, on the way, from Key Bridge into Georgetown and getting up into MacArthur Boulevard---

Q In point of time, Mr. Hoffman, when did you buy the beer, on the way to the party, or did you go to the party, leave and bring it back?

A We bought it on the way.

Q Do you know what the brand was?

A Shaefer, I think.

Q Was any of the beer consumed on the way to the party?

A No.

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Q It was consumed at the party?

A Yes.

Q Where in the house was it consumed, sir?

A In the party room.

Q Was it open and in view of everyone?

A Yes.

Q Did anybody else approach the beer that you observed?

A No, we had no one that wanted---

Q How many of those beers did you drink, if you did?

A About one.

Q Would it have been two?

A No.

Q It could not have been two?

A No. Since we bought---

Q You're positive it could not have been two beers
that you had?

A No.

Q Did Sidney Burnham drink---

A Roger Burnham?

Q I'm sorry. Roger Burnham?

A Yes, sir.

Q How much did you observe that he drank?

A He had one, too.

Q Did Sidney Clewlow drink any of the beer?

A Yes.

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Q How many did you see him drink?

A The beer was poured into paper cups, and he had about one. He didn't want to drink, having to go to---

Q Was all the beer consumed of that six-pack?

A Yes, sir.

Q --between the three of you?

A No. We shared it with some other people.

Q With whom?

A Some others at the get-together.

Q Can you think of any person by name?

A No. These were Sidney's friends. I did not know anyone there.

Q How large were the cups that you were drinking out of?

A These white, wax-coated cups.

Q Can you estimate the amount of ounces that the cup would hold? 8 ounces, 10 ounces, 12 ounces?

A You know, one of those cups, standard type drinking cup-like.

Q I would prefer you give us an estimate, if you could.

A Four to six ounces.

Q How many of those cups did you drink?

A I drank three.

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Q • Three of them?

A Yes, sir.

Q How many cups did you see Roger Burnham drink?

A About three.

Q How many cups did you see Sidney Clewlow drink?

A One.

Q Do you recall having had your deposition taken on July 13th of this year?

A Yes, I do.

Q --at the office of Brault, Scott & Brault, 1319 Fourteenth Street?

A Yes.

Q And referring to page 9 of that deposition, you were asked:

"Q You each drank a couple of beers?

"A Yes, just a couple."

A Yes, sir.

Q Do you remember having made that statement?

A Yes, sir.

MR. MANN: Where is that statement?

MR. ELLIS: On page 9, about 4 lines from the bottom.

BY MR. ELLIS:

Q Do you recall having made that statement?

A Yes.

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Q Do you recall your testimony just a moment ago that you had no more than one beer?

A Yes.

Q Can you reconcile those two answers?

A Yes.

Q Which is correct?

A Approximately one can of beer -- a couple of beers.

Q My question sir, is: Which testimony is correct, the testimony you gave on the 13th or the testimony you are giving here today?

A When I said "bbers," I meant cup-fulls of beer. That's how it was being served. I would say about one beer, one can of beer.

Q So, that's your testimony now, one can of beer?

THE COURT: As I understand him, he says the testimony is consistent with his deposition. Is that what you are saying?

THE WITNESS: Yes.

THE COURT: In other words, when you referred to a couple of beers, you referred to the cups that you used?

THE WITNESS: You see, the beer was being served in cups.

THE COURT: When you said you had a couple of beers, you referred to the cups that you were using, is that what you were saying?

THE WITNESS: Yes.

BY MR. ELLIS:

Q Mr. Hoffman, when the three of you left the party about 12:30 or 1:00 o'clock, was it, in the morning---

A Yes.

Q --young Clewlow had a young lady with him, is that right?

A Yes.

Q And the three of you went to drop her off, is that right?

A Yes.

Q At that particular time who was driving the vehicle?

A Roger Burnham.

Q You were seated where?

A Front seat, right-hand side.

Q Let me ask you this: Following the time that you left the Mannings, somewhere around MacArthur Boulevard, did you have any, either mechanical or battery trouble with the automobile, any at all?

A No.

Q None whatsoever?

A No.

Q The battery gave you no trouble?

A No. It was new.

Q The car never stopped involuntarily because of

133 mechanical troubles?

A No.

Q Did you ever have to get out and push?

A No.

Q That did not happen?

A No.

Q Mr. Hoffman, following this collision on December 29, 1965, and as a result of it, sir, do you recall having been questioned by any members of the Metropolitan Police force?

A No.

Q You don't remember having been questioned?

A No.

Q Do you remember being at---

A Oh, yes, I do.

Q Do you remember whether it was by plainclothesmen or by uniformed officers?

A I think this was a Metropolitan policeman that talked to me a little while in the hospital.

Q Washington Hospital Center?

A Yes, I think---

Q Did he ask you about the events of the evening, sir?

A I can't remember.

Q Did he ask you about the happening of the collision, if you remember?

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A He must have, but I don't really remember anything about it.

Q You don't remember what your responses were?

A No.

Q At all?

A No.

Q If I tell you, sir, that you were questioned by a member of the Accident Investigation Unit of the Metropolitan Police Force on December 29, 1965, in the Emergency Room at Washington Hospital Center, and that among other things, you told---

MR. MANN: I object to this line of testimony.

THE COURT: Is there evidence of that in this case?

MR. ELLIS: Of what?

THE COURT: Of what you are about to ask him.

MR. ELLIS: He has given a statement to the officers.

THE COURT: It's not in the case?

MR. ELLIS: No.

THE COURT: Sustain the objection.

MR. ELLIS: Let me have this marked for identification as Plaintiff's Number 28.

THE CLERK: Plaintiff's Exhibit No. 28 was marked for identification.

MR. MANN: I object to this as not in his handwriting, and just some raw notes, nothing else.

THE COURT: Will counsel come to the bench?

(AT THE BENCH:

MR. MANN: There is no indication as to who it was given to.

THE COURT: Has he signed it?

MR. MANN: No.

MR. ELLIS: I'm just using it for purposes of impeachment.

THE COURT: What does it prove? There is no evidence here of who wrote it, or who signed it. It doesn't carry the man's signature.

MR. ELLIS: I have an officer here from A.I.U. who can testify it is from the official records.

THE COURT: That doesn't make any difference.

MR. MANN: I would ask that you ask the jury to disregard it.

THE COURT: I will do so. It's highly improper.

MR. ELLIS: I don't know whose initials they are.

There are some initials in the corner.

(BACK IN OPEN COURT:

THE COURT: Members of the Jury: You are instructed to disregard this last line of questioning and pay no attention to it and draw no inferences from it.

MR. MANN: Mr. Ellis, do you mind if Dr. Ammerman is permitted---

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THE COURT: I would rather have you conclude your cross-examination.

MR. ELLIS: All right.

BY MR. ELLIS:

Q Mr. Hoffman, your testimony is, sir, that the car never stopped on this occasion? You and your companions had no occasion to push it?

A No.

Q Did you stop at an Esso Station?

A Yes.

Q What was the purpose of that?

A To get directions.

Q Where was this Esso Station located?

A I told Mr. Mann, I'm not sure of the exact location, I just remember it was on a busy street -- I mean, a wide street.

Q Had you traveled far from where you let the young lady off to where you came to the Esso Station?

A A pretty good distance, a mile.

Q Do you know which direction you were going, north, south, east or west?

A No.

Q No idea in what section of the City you were?

A No. I just remember that the street that the Esso

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Station was on wasn't like a 14th, 15th, or P, Q, or R Street; it had a names that I wasn't familiar with.

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Q Name what?

A A Name I was not familiar with.

Q That you were not familiar with?

A Yes.

Q Do you know what area of the City the young lady lived in?

A She lived out coming onto MacArthur Boulevard, out toward Maryland, over toward the Maryland line.

Q Would that be in the extreme western-most portion of the District of Columbia?

A Out toward Montgomery County, if that's west.

Q Would it also be toward parts of Virginia, across the River?

A No, no.

Q In any event, there came a time when you got on W Street, is that right?

A On what?

Q W Street.

A Yes, a

Q And were proceeding east, were you? Let me ask you this: Do you remember how long you were driving on W Street?

A No, I don't.

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Q Had you traveled far from this Esso Station when you found yourself on W Street?

A Not really too far.

Q Do you know where Georgia Avenue is in the District of Columbia?

A Yes.

Q Do you remember having crossed or been on Georgia Avenue on this evening?

A No.

Q At any portion?

A No. I just know where Georgia Avenue -- like Maryland -- where it crosses the Beltway.

Q You are not familiar with Georgia Avenue as it runs through the District of Columbia?

A No.

Q Any portion of it?

A No.

Q How fast was your vehicle travelling as it was proceeding east on W Street, after you became aware you were on W Street?

A How fast after we were on W Street?

Q How fast were you going?

A 25 miles an hour.

Q Did you look over and see the speedometer?

139 A No, but I could judge we were going the speed --
I could tell what that was.

Q Burnham was driving at this time?

A Yes, sir.

Q Do you remember when you approached the intersection
of 4th Street?

A Yes, sir.

Q Do you remember what the lighting conditions were
at or near this intersection -- good, bad, or you don't
remember?

A No.

Q Were the headlights on your vehicle operating?

A Yes, they were.

Q Do you remember your driver having slowed or stopped
as he came to the intersection -- 4th Street?

A Yes.

Q How far were you -- you say you were riding in the
vehicle -- from the intersection of 4th Street, pointing on
the blackboard here, when you first noticed the existence of the
Stop Sign posted here?

A I don't understand.

Q How far was your vehicle up here from this point
(indicating) when you first observed the existence of the Stop
Sign which is posted here?

A I did. When we slowed down and stopped.

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Q How far back from this point was the vehicle when you first noticed the existence of the Stop Sign, in terms of feet or yards?

A When the driver first noticed it?

Q When you first noticed it.

A The Stop Sign?

Q Yes.

A When we stopped.

Q You didn't notice it until you stopped?

A No.

Q How far back of this point was your vehicle when you first became aware that the vehicle was being braked or decelerated?

A A fairly good--- Like---

Q Can you translate it in terms of feet or yards?

A Oh, I would say ten yards.

Q Ten yards before you stopped, you felt the vehicle slowing down, is that right?

A I'm not sure of the distance, about that.

Q That's your best estimate. Do you want to use some object in this courtroom?

A I guess about ten yards. We were going slow and---

Q You were going 25 miles an hour, weren't you?

A I would say that, approximately -- just slowed down to a normal stop. I guess that takes about ten yards.

Q Let me ask you this: Did your vehicle stop, come to a big stop?

A Yes.

Q How long did the vehicle remain in a stopped position, if it did?

A Just for 5, 10 seconds.

Q Five to ten seconds. During the time when your vehicle was sitting in this stopped position, did you observe any traffic traveling north or south on 4th Street?

A No.

Q Nothing passed you for this 5 or 10 seconds?

A No.

Q Then after ten seconds elapsed, your driver accelerated?

A Yes.

Q Let me ask you this: Would you come down here to the blackboard, Mr. Hoffman? Using this piece of crayon, sir-- and you might move to this side -- would you place an "X" mark at where you say your vehicle stopped in obedience to the Stop Sign in this intersection? Take your time and orient yourself and then place an "X" mark.

A The car was about even with the Stop Sign.

THE COURT: He says it was about even with the Stop Sign. I think that answers your question.

BY MR. ELLIS:

Q This is the Stop Sign right here (indicating). This

(indicating) is the curb.

A The car would be out like that (indicating).

Q If you just put an "X" mark.

A (Witness marked "X".)

MR. MANN: You do not have to guess, Rick.

MR. ELLIS: You may resume the stand.

BY MR. ELLIS:

Q Mr. Hoffman, from this stopped position here, you say the vehicle remained about 5 or 10 seconds, and then began moving forward, is that correct?

A Yes.

Q At what point, in relation to the intersection, had it gone when you first observed the Bentley vehicle?

A Half-way through.

Q Yes, sir. How far had it moved from this point out into the intersection in terms of feet or yards when you first observed the Bentley vehicle?

MR. MANN: I believe he has said half-way through, and that speaks for itself.

THE COURT: He was asked to state it in feet. If he can't---

Can you state in feet how far you were?

THE WITNESS: Well, the only thing, I'm trying to say, just like driving normally, it was a normal stop and a normal take-off. I'm not good at estimating feet and things

143 like that. We were out in the intersection, I guess, 15 yards.

BY MR. ELLIS:

Q Would it help if you came down here and marked where it was in the intersection?

A About in the middle of the intersection.

Q I would prefer you do it and accept (I'll) that this is your estimate.

A (Witness marked diagram.)

Q Thank you. Just a second, if you will, just stand right there. This is where you say you were (indicating), your vehicle was when you saw the Bentley vehicle?

A Yes, sir, out in the intersection.

Q Can you come here again, and tell us where the Bentley vehicle was in relation to this intersection when you were here (indicating)? How far from this point was the Bentley vehicle, and put another "X" there.

A You mean when I first saw it?

Q Prior to impact, if you did.

A I guess it would be about -- I'm trying to estimate. I guess this car would be about 15 yards. I don't know.

Q Approximately 15 yards from your vehicle when you first saw it ---

A Yes.

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Q --in relation to this intersection, the south curb of 4th and W?

A I said I didn't want to mark on the "14" so I made the arrow down a little bit.

Q As your vehicle moved out into this intersection, Mr. Hoffman, were you looking straight ahead, to the right or to the left?

A Looking straight ahead.

Q Well, did there come a time prior to impact that you had occasion to look to the right?

A No.

Q But you're telling us that you saw the Bentley vehicle?

A I saw the headlights.

Q You saw headlights.

A Yes.

Q Are you saying the headlights, in your opinion, were approximately 15 yards away from you at this time?

A Yes.

Q This vehicle was moving in a direction that was perpendicular to yours or at right angles to the direction to which your vehicle was going?

A Yes.

Q Coming from your right, is that right?

A Yes, sir.

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Q How long was this vehicle in your view before impact, if you know?

A Time is sort of distorted. You know, it seemed to take forever for the accident, but it couldn't have been very long at all, just a matter of seconds.

Q What I'm getting at, sir: You have told us on direct examination that in your opinion, and by reason of the fact that you were a driver of some 5 or 6 years, you estimated the speed of the Bentley vehicle to be 60 miles an hour, no question about that.

A Yes. No question about that, yes.

Q All I'm trying to get in is the amount of time you had to observe this vehicle, where it was coming from.

A I said a matter of seconds, just---

Q When you first saw the Bentley vehicle, did you anticipate there would be a collision?

A Yes.

Q What if anything did you say or do---

A Nothing.

Q --in this regard?

A Nothing.

Q Did you make any exclamation to your friend, Roger, the driver?

A No.

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Q Did you attempt to reach over and pull the wheel, the steering wheel of the vehicle, to veer the course of the automobile?

A No.

Q Excuse me?

A It was just a matter of seconds. I just saw it and it happened.

Q Did you say, "Look out, Roger," or "Watch that car"?

A Well, I don't remember anything about that. I just remember -- just seeming to take---

Q But you were able to estimate the speed of the car?

A Yes, but I mean the accident---

Q At this particular time, prior to impact, how fast was your vehicle going?

A We just stopped at the Stop Sign and were just pulling off. I would say, 5 to 8 miles an hour.

Q Five to eight miles an hour?

A Yes.

Q Was the vehicle straight or automatic transmission?

A Straight stick.

Q Which vehicle collided with which vehicle?

A What?

Q Which car struck which car?

A We struck into him, I guess.

Q Excuse me?

A I guess we struck into him. I really don't remember too much about it.

Q You struck the Bentley car?

A I don't remember too much about it. I just remember seeing the lights and then --- I was in sort of a state of shock. I can't remember too much after that.

Q Is it possible, Mr. Hoffman, that your vehicle did not stop at the Stop Sign?

A No. I remember that part.

Q --either because your driver didn't see it or some other reason?

A No. I'm positive we stopped at the Stop Sign.

Q Did you ever at any time observe the damage to the respective vehicles, any time from that day to this? Have you ever been shown any pictures?

A No. I saw a picture in the newspaper.

Q We're not concerned with where you saw it. You saw some pictures, is that right?

A Yes.

Q These pictures that you were shown---

A I saw one picture.

Q One picture. Was that picture of the vehicle in which you were riding?

A Yes.

Q What part of the car was damaged that you observed?

A The front.

Q Full front, right?

A Yes.

Q Were you ever shown a picture of Mr. Bentley's car?

A No, I was not.

Q You were not?

A No.

MR. ELLIS: I believe that's all I have.

THE COURT: Any redirect?

MR. MANN: No, sir. May this witness be excused?

THE COURT: Do you have any objection to his being excused?

MR. ELLIS: No, sir.

THE COURT: Let me ask you a question first: Have you ever lived in Washington? Washington is not your home?

THE WITNESS: Falls Church is. I have lived there all my life.

THE COURT: I am trying to understand your failure to understand the streets in Washington.

THE WITNESS: Well, there are certain sections I know, the downtown area; I know Georgetown and I'm familiar with that area, but once you get me out of there, I have just not had any occasion to go back.

THE COURT: You never went to school in Washington?

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THE WITNESS: No. I used to drive to my aunt's house, or used to be driven to my aunt's house.

THE COURT: Anything further of this witness?

MR. ELLIS: No, sir.

MR. MANN: No, sir.

THE COURT: You are excused and you may go.

(Witness excused.)

MR. MANN: Your Honor, may we have a five-minute recess where I can show the hospital records to Dr. Ammerman? I have not shown them to him.

THE COURT: Yes, we'll take a short recess.

(Short recess.)

MR. MANN: Your Honor, I would like to call Dr. Ammerman.

149-A

DOCTOR HARVEY H. AMMERMAN

was called as a witness on behalf of the defendant, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MANN:

Q Doctor, would you please state your full name?

A Harvey H. Ammerman.

Q What is your occupation?

A I am a physician.

Q Do you have a specialty?

A Yes, I do.

Q What is that specialty?

A I limit my practice to neurology and neurological surgery.

MR. ELLIS: If the Court please, I would be willing to stipulate Dr. Ammerman's qualifications, that he is a qualified, boarded neuro-surgeon and a very capable one.

MR. MANN: Right.

THE COURT: Very well.

BY MR. MANN:

Q Doctor, did you have occasion to examine plaintiff, 149-B in this case, Mr. Carl T. Bentley?

A Yes, sir, I did.

Q Do you recognize him as being present in this courtroom?

A Yes, sir.

Q Can you tell us on what date you examined him?

A Mr. Bentley was examined in my office on August 5, 1968.

Q Doctor, prior to that examination, did you have available to you and did you review the electroencephalogram report and the report of Dr. Barber and the hospital records of Freedman's Hospital and the U.S. Public Health Service Hospital, in Baltimore?

A Yes, some before and some after, but I did have that information available in preparing my report.

Q Prior to the examination of Mr. Bentley when he was in your office, did you obtain a history from him?

A Yes, sir, I got routine medical history.

Q Could you tell his Honor and the ladies and gentlemen of the jury what that medical history contained or was?

149-C A The history itself which I obtained from the patient in my note is as follows in the in-take interview -- that is, the initial history of the patient: I find the patient to be hostile, uncommunicative, evasive and gave only minor details in answering question. He stated he never had any episodes of unconsciousness prior to the accident, although he was unconscious following the accident. He stated he had electroencephalogram either during or shortly after his hospitalization/^{at} Freedman's hospital and also he was seen in consultation by Dr. Jesse Barber.

No specific complaints referable to his head or central nervous system. He stated he did not know what medication he was on other than a cholesterol-reducing agent. The record showed he was injured 29 September 1965 while driving his car which was involved in a collision with another vehicle. He was briefly unconscious after the accident and taken to the Emergency Room of Freedman's Hospital.

Q Doctor, that is December 29th, 1965. I think that's correct, December 29, 1965.

A Yes, the typist transcribed the month incorrectly.

He was briefly unconscious after the accident, taken to Emergency Room of Freedman's Hospital where laceration in the left occipital area of the scalp was sutured. Following his care in the emergency room, he was admitted to the hospital for injuries relating to his chest, neck, abdomen and right ankle. He remained in hospital for approximately six weeks.

The past history, based on the records reveals that the patient has been hospitalized in the Atlantic City Hospital for coronary thrombosis in August '65; at Freedman's Hospital, December 1965; at U.S. Public Health Service Hospital in Baltimore, September of 1966 and was treated for a recent heart attack at U.S. Public Health Service Hospital in July 1968, he being eligible for Public Health Service care because he worked for many years as a merchant seaman.

Q Doctor, what did your neurological examination show, what were the results of your neurological examination of Mr. Carl Bentley?

A The patient was a 49-year-old man who walked with normal gait; blood pressure 110/80, which is normal. He had a well-healed, 2-centimeter (that's approximately one inch) scalp laceration over the back of his head. Eyes, normal. His pupils were equal, reacted to light in a normal manner. Movements of his eyes were normal, as were the

remainder of the nerves of his head and neck. Coordination was normal for all movements. Balance was normal. Movements of his neck were normal. There was no neck muscle spasm. Movements of his low back were entirely normal. Sensory examination for pin-prick, touch and position in both arms and legs was normal.

The reflexes for the biceps, triceps, ulnar and radial muscles, knee jerks and ankle jerks-all reflexes symmetrical and were normal. There were no abnormal reflexes. In other words, those reflexes which should be normal were normal, and there were no reflexes that were abnormal.

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Q Did you review the electroencephalogram?

A I had that report, that's correct.

Q Was it normal?

A It was normal.

Q What opinion or what medical conclusion opinion did you arrive at based upon your examination of Mr. Bentley and his records?

A It's my opinion that the patient sustained, as far as head injury goes, a cerebral concussion and from which he had fully recovered and was without any after-effects at the time of my examination.

Q Thank you, doctor. One or two other questions: Did Mr. Bentley, from your records, reveal it or from independent recollection, did he tell you that he was unconscious

before the accident?

A He was not sure.

Q Are you familiar with the drug, doctor, known as butisol. (phonetic)?

A Yes.

Q Would you tell his Honor and the ladies and gentlemen of the jury what it is?

A Butacyl is a sedative, a tranquilizer.

Q What are the effects of normal dosages of butisol
149-P does it have any effects?

A Well, yes, it has the effect of relaxing the patient, slowing him down and making him, depending on the dosage, sleepy or relaxed.

Q When you give normal dosage of butasol, do you place any restrictions on a patient's activities?

A It varies, but in general, when you use tranquilizers and sedatives we do like to restrict the individual from driving cars, running high-speed machinery, and other situations because they may be slowed down.

Q Doctor, normally, if you prescribe butasol to a patient, is there any restrictions on his intake of alcoholic beverages? May he take drinks or may he not?

A We prefer they don't because alcohol also has a sedative effect, and tranquilizers and alcohol tend to what we call potentiate each other, tend to make each other more

effective, so if you add them together, the patient may be even more tranquilized or even more sedated, maybe more lethargic.

MR. MANN: I thank you, doctor. You may inquire.

CROSS-EXAMINATION

BY MR. ELLIS:

Q Your last opinion, with respect to the combination of alcohol and tranquilizers, would you be able to further qualify that by saying a rather massive dose or something more than a normal dose of tranquilizers, coupled with more than a normal consumption of alcohol might possibly produce this effect -- would probably produce this effect?

A What effect?

Q That of further induced drowsiness, I think you said, and sedation.

A Yes. I think the more you take of each of them, particularly together, the more sedated a patient will be.

Q But simply a normal prescribed dosage of tranquilizer, say butasol, if coupled with just a normal consumption of alcohol, would that necessarily substantially sedate -- or, that is to say, would the addition of alcohol appreciably increase the sedative effects?

A I want to be sure I understand the question: Where you took the usually-prescribed dosage of a sedative?

Q And had a drink or two?

A Had a drink or two. The effect of the two together is more than what you would expect from each one added to the other. Let me perhaps describe it this way: Let us assume a certain amount of sedative on the scale of ten would make the patient, say, 20 percent sleepy; and a certain amount of alcohol on the same scale would make a percent 20 percent sleepy. You might use this analogy: Putting the two together 149-H might make the patient 60 or 70 percent sleepy, not 40 percent more sleepy -- in other words potentiating each other.

Q In order to reach that conclusion, you would have to know as factors the amount of tranquilizer taken and the amount of alcohol, is that correct?

A For a specific case, that is correct.

MR. ELLIS: No further questions.

May this witness be excused?

THE COURT: Witness may be excused.

CARL W. CLEWLOW

Defendant herein, was called as a witness in his own behalf and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MANN:

Q Mr. Clewlow, please state your full name.

A My name is Carl W. Clewlow.

Q Where are you employed?

A I am employed in the Federal Government.

Q Directing your attention to December 28, 1965, did you own on that date a 1954 Plymouth 4-door sedan that was the next morning at 2 o'clock involved in an accident?

A I did.

Q When and from whom had you purchased this automobile?

A I had purchased this car approximately 4 to 5 weeks prior to that from a Mr. Jefferson Fagan.

Q Could you tell his Honor and ladies and gentlemen of the jury, if you know, the mechanical condition of the car, and go into as much detail as you require -- the brakes and so forth -- on the afternoon of December 28, 1965, if you know.

A Yes. I could tell the condition of the car. I had known the owner of the car since its purchase, and I knew the car had had limited driving. I happen to be interested in things mechanical, and I checked out personally the mechanical attributes of the car before its purchase.

Q Do you grind your own valves?

A I do.

Q Tell them in detail the condition of the car.

MR. ELLIS: Just a minute. I'm sorry, I didn't get your query.

MR. MANN: I asked him to continue with the physical, mechanical condition of the automobile.

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THE WITNESS: I had taken occasion to have the compression check on each of the cylinders, and found the compression in each of the cylinders was within one percent of new-car condition. I had checked the tires on the car, and two days before purchased two new snow tires for the car in anticipation of cold weather arriving in a few days.

BY MR. MANN:

Q Were they on the car?

A They were on the car on the 28th day of December and on the 29th day of December.

Q What about the front tires?

A The front tires had been purchased new just prior to my acquiring the automobile, so there was no need to take new tires off and replace the new tires. Therefore, I had four very nearly new tires on the car. I had checked the car for every other item which is required in state inspection prior to purchasing it, and had just 4 to 5 weeks before, when I purchased it, done so on the basis of a satisfactory Virginia inspection, which is somewhat rigorous.

In addition to that, I had checked the car out that day myself, because I was not at work on the 28th day of December, having taken time off to spend it with my family during the Christmas holidays, and I had checked the car to determine anything that needed to be done. I determined that it had proper anti-freeze in the radiator. I knew cold weather

was coming, and I decided it should have a new battery because there wasn't any call to have to replace a battery on an emergency basis. Therefore, I had given my son \$20 to go to a nearby Western Auto Store and have a new battery installed so the car would be in tip-top shape for the coming winter. The car, generally, was in very good shape.

Q Do you know about the condition of the brakes?

A Yes. I took the front wheels off the car myself and checked for the adequacy of brake bands as well as the performance of the brakes.

Q Did Sidney Clewlow, your son, have your permission to take the car on the evening of December 28th?

A He did.

Q Did you know where he was going?

A I did.

Q Did you know with whom he was going?

A I did.

Q Did you know the names of the people at whose home he was going?

A Yes. I knew not only the names, but I knew the persons themselves.

Q What was their name?

A Their name was Manning.

Q Do you know where they live?

A Mannings live approximately two blocks off MacArthur

Boulevard, Berkley Terrace and W Street, Northwest.

Q W Street, Northwest?

A W Street, Northwest.

Q If you know, can you tell us at approximately what time Sid, as you call him, left your home on the evening of December 28, 1965.

A Sidney left the home just a little before 7:30 or around 7:30 because he excused himself from the dinner table.

Q Did he eat with you?

A He sat with us, but since he was undergoing surgery the next morning, he was restricted in terms of food. He had one glass of milk that evening.

Q What type surgery was he to undergo the next day?

MR. ELLIS: I don't mind this testimony, but I don't know how relevant it is.

MR. MANN: Very well. If you object, I'll withdraw it.

BY MR. MANN:

Q You knew that he was going by and pick up Roger Burnham and Ricky Hoffman?

A Yes, I did.

Q How long had he known Ricky Hoffman and Roger Burnham, if you know?

A He and Ricky Hoffman had been in elementary and high

school ever since both started in the first grade. He and Roger had been in Junior High School and High School since the beginning of the seventh grade.

MR. ELLIS: I fail to see the probative value of this question.

THE COURT: He may answer.

BY MR. MANN:

Q Did Ricky Hoffman have your permission to drive your car if he wanted to?

A Ricky Hoffman had my permission to drive the car.

Q Had he driven it previously?

A I knew he had driven it one time before because he had asked, and Sidney had asked that he do so.

Q Did Roger Burnham have your permission to drive your car?

A Yes, he did.

Q Did you have occasion later in the evening of December 28, 1965 to visit the get-together in the Manning home on W Street, or off W Street, Northwest, in Washington?

A Yes, I did.

Q Who went with you?

A I took my daughter who at that time was aged 16 to attend the party since she had been with some friends earlier that evening, and she wanted to get together with these people at that particular time. At the same time, I

Picked up my older son and brought him home, since he had some studying to do.

Q What time did you arrive at the Manning residence and how long did you remain?

A I arrived at the Manning residence at about 11, 11:10, or thereabouts, and remained about ten to fifteen minutes.

Q And left your daughter there?

A Left my daughter and brought my son, my older son, with me.

Q Did you see Sid at the get-together at the Manning house?

A Yes, I did.

Q Did you see the other boy?

A I saw Roger, Roger Burnham. I did not see Ricky Hoffman. I asked where he was and was told he was upstairs in another part of the house at the moment.

Q What were the kids -- youngsters, not kids -- doing when you arrived at the party at about 11:10 p.m.?

A Dancing and eating.

Q Would you tell his Honor and ladies and gentlemen of the jury the nature of the refreshments, including both food and drink that were there at the Manning residence when you arrived?

156 A The food and drink which was there was a table which had a wide variety of sandwiches, cookies and cakes, and there was a large container with soft drinks in it.

Q Did you see any beer?

A I did not.

Q Did anyone that you saw at the get-together---
Strike that.

Were there any adults-by that I mean, your age --
at the get-together?

A Yes, there were.

Q Do you know who they were?

A I recollect one just at the moment, a Mr. Freeman.

Q Was his wife also there?

A She was there.

Q Were Mr. and Mrs. Manning there?

A Mr. and Mrs. Manning were there. I saw the Mannings.

Q So, there were at least four adults there?

A Yes. I was told there were four other adults there also, playing bridge in a room adjacent to where the youngsters were dancing.

Q During the entire time you were there, did you see anyone who appeared to have consumed any beer or other alcoholic beverages?

A No, I did not.

Q Mr. Clewlow, I must ask you this question, unpleasant though it may be: Would you tell us, describe your son, Sidney Clewlow, that is, his behavior?

MR. ELLIS: I am going to object. Sidney Clewlow is not---

THE COURT: Sustain the objection.

MR. MANN: Very well.

BY MR. MANN:

Q Would you describe anything you know that's pertinent---

MR. ELLIS: I am going to object. It's too general.

THE COURT: I will sustain the objection.

BY MR. MANN:

Q How well did you know Roger Burnham?

A I knew him quite well. I had played tennis with Roger Burnham.

MR. ELLIS: You have answered the question, Mr. Clewlow.

THE WITNESS: I was answering the question.

THE COURT: I think you have answered the question.

BY MR. MANN:

Q Had you ever known Roger Burnham to have consumed alcoholic beverages?

A No, not to my knowledge.

Q Would you have known it if he had?

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MR. ELLIS: I am going to object to that.

THE COURT: I will sustain the objection.

BY MR. MANN:

Q How old is your son Sidney?

MR. ELLIS: It's been established in the record, and it's not relevant.

THE COURT: Objection overruled.

THE WITNESS: Nineteen and one-half at the time of his death.

BY MR. MANN:

Q Was he a college student?

A He was a college student.

MR. ELLIS: I want to say to the Court, it is an attempt to invoke sympathy from the jury.

THE COURT: I will sustain the objection.

MR. MANN: I would like to be able to ask, your Honor, what was his occupation.

THE COURT: I don't think it's material in this case.

MR. MANN: You may inquire.

MR. ELLIS: I have no questions.

MR. MANN: Thank you, Mr. Clewlow.

(Witness excused.)

MR. MANN: May we approach the bench?

(AT THE BENCH:

MR. MANN: I have under subpoena, your Honor, a

registered nurse on duty in the Emergency Room at Freedmen's Hospital the night Mr. Bentley was taken there. However, I sent an investigator to talk with her. She told him, "You'll be sorry if you subpoena me." I have subpoenaed her and I am deathly afraid to bring her here because, well, I don't know what to do.

THE COURT: Well, is she under subpoena to be here this afternoon?

MR. MANN: I put her on telephone call.

THE COURT: That's the risk you've got to take, Mr. Mann.

MR. MANN: I am not afraid of the truth. I'm not sure I'll get it. That's the trouble. I'm not going to call her. I'll make the decision right now.

THE COURT: That's something I can't advise you.

MR. MANN: That concludes the defendant's case. I would like to make another motion somewhat different from the one I made this morning.

THE COURT: Are you going to have any rebuttal?

MR. ELLIS: No.

THE COURT: Why don't I do this then? Why don't I excuse the jury; let them go until Monday. You can make your motion and then I may have some other matters to take up with you gentlemen.

I can tell the jury this concludes all the evidence

in the case?

MR. MANN: Yes.

MR. ELLIS: Yes.

(BACK IN OPEN COURT:

THE COURT: Ladies and gentlemen of the jury: Counsel have advised the Court that this concludes all of the evidence to be offered in this case. There are some matters which I have to discuss with counsel, which I suspect will run another half hour or so, which would bring us beyond 4 o'clock, and I know you don't want to be here after 4 o'clock, so I am going to let you go at this time until Monday morning.

On Monday morning, as you probably know from prior experience, further proceedings will be for counsel to make what we call summations, give their version of the case and endeavor to help you in the performance of your duties. Then it will be my duty to charge you on the principles of law which should govern you in your determination of the case, and then it will be your duty to decide it.

I don't think I should even have to do this, because I know you are all conscientious jurors, and know your responsibilities. Please bear in mind that while you have heard the evidence, you have not heard the summations of counsel and you have not heard from me on the law. This will be fairly lengthy, I am afraid, and you should not come to any judgment until you have heard all of those things and

until I have told you the principles that will control you. You must not discuss the case with anyone over the weekend. Don't even talk about the case among yourselves. You will have plenty of opportunity to do that after you get the case on Monday. Don't do anything to investigate the facts of the case. Don't go out to 4th and W Streets to look it over. You have seen the pictures and that sort of thing. Bear in mind that you are going to decide the case on the basis of the evidence that you have heard in the courtroom during the course of this trial and under the law as I should give it to you.

I will excuse you now and hope you have a happy weekend. Be here Monday morning so we can resume promptly at ten o'clock.

(Jury were excused from courtroom.)

THE COURT: Mr. Mann, you had something you want to take up with the Court?

MR. MANN: Yes, sir, I would like to renew my motion for directed verdict in favor of the defendant on the basis, as stated previously and argued previously in detail, failure to establish a prima facie case; and initially, I would like to elaborate on the other point, the fact that I would submit that the evidence taken most favorably to the plaintiff establishes clearly as a matter of law that the plaintiff was guilty of contributory negligence.

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He testified that he was driving down 4th Street, headed north and that he was looking straight ahead, and that he saw nothing.

THE COURT: Not that I think it is too important, is that a fact? Did he so testify?

MR. MANN: Yes.

THE COURT: My recollection is, you asked him if he hadn't given such testimony at the time of the deposition.

MR. MANN: At this time he also did, that's right. He said, "I also did, looked straight ahead."

THE COURT: He qualified that by saying he did not recall what had taken place. In any event, I will accept your version.

MR. MANN: Also, your Honor, I believe the driver of an approaching vehicle is required to yield the right of way to a vehicle which has already entered the intersection from another driveway, which is Section 46 (a) of the D. C. Traffic Regulations.

Quoting from Barron and Gold Federal Practice
& Procedure, Number 3, Article 1232.1:

"It is only when conduct can be said, as a matter of law to have fallen below the standard of a reasonably prudent person that the question of contributory negligence may be taken from the jury and determined by the Court."

However, in this case, the evidence clearly shows that the plaintiff was taking, by his own admission, three drugs, one of which was a tranquillizer called Butasol (phonetic). The evidence shows, and his own testimony was that he had been in a poker game with persons unknown. He stated he had consumed no alcoholic beverages, but there was evidence from the police officer, who should be unbiased, that alcohol was smelled on his breath, and that he gave the appearance of being "under the influence."

I would submit that since the evidence shows that the only testimony is that the Clewlow vehicle approached, traveling east on W Street and Stopped at the Stop Sign, and there is an abundance of testimony that there were no obstructions, nothing to interfere with visibility, that it was a well-lighted intersection, that no one would have any difficulty seeing, yet there is no testimony to show that there was any attempt to avoid the accident, any swerving or anything like that.

Taken most favorably to the plaintiff, the facts are that he was traveling, looking straight ahead, and never saw anything until impact and then he was unconscious, but taking a drug, a sedative, and with testimony indicating that he had consumed some alcoholic beverages. I would submit, your Honor, that as a matter of law, the plaintiff is clearly guilty of contributory negligence, and I would ask for a

directed verdict for the defendant, based upon this.

THE COURT: Do you want to say anything?

MR. ELLIS: If the Court please, first of all, I don't believe all the statements Mr. Mann made reference to are in the record. I don't think there is any testimony that Mr. Bentley was taking the drugs referred to on the evening in question. First of all, the testimony of the police officer with respect to his smelling the odor of alcohol on his breath is, to say the least, most equivocal and subject to the jury's inspection as to whether or not they want to accept it at all in view of his prior testimony in the deposition in this cause.

There is no definite evidence that alcohol was consumed. This particular defendant categorically denied having consumed any, but accordingly, I would think without more, this makes it a jury question, so I would think there is no basis here for the Court ruling, as a matter of law, that this plaintiff here was guilty of contributory negligence.

With respect to alleged speed coming up the street, we have the opinion of a young man, and I think it's enough for the jury to decide whether they are willing to accept his estimate of what he says the speed of Mr. Bentley's vehicle was, under these circumstances.

You have certainly a question of fact here regarding all of the facts here. The happening of the accident, I mean

viewing -- and of course, we the plaintiff are entitled to have our facts viewed in the light most favorable to us. I submit that we have established that the Bentley vehicle was going north on 4th Street, that the Clewlow vehicle was proceeding east, and this has been established testimonially and circumstantially and through physical evidence, which I submit is sometimes the best -- was proceeding east on W Street at the intersection of 4th.

We have established several ways that there was at that time a Stop Sign there, and of course, we have in evidence further, traffic regulations with respect to a driver's obligation to obey. We have further his obligation to yield, under such circumstances. We have the coming together of the automobiles. We have evidence of damage to the Clewlow vehicle in the full front as opposed to damage to the Bentley vehicle to the left side. Certainly, this establishes the direction of the vehicles.

The officer, through his testimony, was able to establish where the point of impact was. This is right in the middle of the intersection. We have a Stop Sign here. So I think, on the one hand the plaintiff has established a prima facie case of negligence as directed against the defendant and is entitled to have the jury decide this question.

THE COURT: Mr. Mann argues that this establishes as a matter of law that there was contributory negligence.

do you say to that?

MR. ELLIS: Again I will, I hope I will address myself more clearly to this fact. What is the evidence we have of contributory negligence here? Mr. Mann suggests, of course, there is evidence of Mr. Bentley's taking some pills and tranquilizers that night. I submit this is not in the record, but simply that sometime or another, he admitted by reason of his heart condition, he did take those drugs. Moreover I would submit that the medical testimony with respect to the effect of the taking of those drugs is a question that the jury can decide. We had very clear testimony yesterday on the part of Dr. Johnson that a massive dose of Butasol (phonetic) and Lufa, whatever--- One of the drugs was Dicumeral, an anti-coagulant, I believe. The other drug was Lufa that did something to the cholesterol content of the body. Butasol, as I understand, was a tranquilizer.

And I think, in answer to Mr. Mann's question to Dr. Johnson, as to whether the combination of alcohol and Butasol would have a sedative type of effect, or whether or not there was any correlation between the precipitation of a heart attack in a person taking Butasol and partaking of alcohol, I believe Dr. Johnson said that they in the cardiovascular field had failed to find any correlation. However, in order to produce^a sedating effect, there would have to be a

massive dose of tranquilizer, coupled with an excessive ingestion of alcohol.

We don't have any specific evidence of the ingestion of alcohol. The plaintiff has denied it. The officer has told us two things: One said he smelled the odor of alcohol. But how does this determine a quantity? And moreover, in another point, when he was faced with his prior testimony with respect to whether he was able to detect the odor of alcohol, he stated as true the statement he made in March to the effect that he attempted to lean down in order to determine whether or not this man had been drinking. He could not verify the presence of alcohol for the specific reason that Mr. Bentley had such a terrific case of bad breath that he could not stomach it.

Now, mind you, this particular testimony was not solicited or elicited from him. This is something that the officer volunteered, you see. So I say, it's a very strong factor here. So when you look at that bit of testimony as opposed to his other testimony that he did smell some alcohol then we wonder whether his testimony can be believed or not, and doesn't it neutralize itself? But certainly, I think the jury as a fact-finding body, has the right to determine as to which version it wants to accept, or whether it wants to accept his testimony at all in that regard.

I would say in order for the Court to take this case from the jury, there would have to be a very clear, uncontradicted bit of evidence with respect to drinking here. We do not have this. We do not have anything with respect to quantity, and we have a denial of any consumption.

I would submit, your Honor, this is unlike -- and I am unable to give the Court the name of the case, but the famous one, the "Tom Collins case, I think in which the Court of Appeals sustained the lower Court in granting of a directed verdict where, I think, a plaintiff had admitted having had one Tom Collins.

You see, you don't have that here. Mr. Bentley has admitted to consuming no alcohol, so I would certainly urge strongly upon the Court that it is a factual question and can only be resolved factually by the jury.

MR. MANN: Your Honor, I would like to explore this just a moment for the record. What emphasis can be drawn from the mere happening of an accident? I would submit, your Honor, that the legal presumption is that both parties acted without any negligence. That's the legal presumption we have to start off with. And the law is that no inference of negligence may be drawn from the mere happening of an accident without regard to where, what part of what car came in contact with what car. I submit that from that alone, no

inferences of negligence would be permissible.

Further, I think that, speaking of the testimony it is undisputed that despite the fact that the front of the defendant's vehicle came in contact with the side of the plaintiff's vehicle, and ordinarily you know what would happen. Nevertheless, the police officer testified that 79 feet away, after striking a rather substantial iron grill, the plaintiff's vehicle came to rest upside-down.

I think that some presumptions can be drawn from that; that the presumption is that the plaintiff's vehicle was, as a minimum, exceeding the speed limit, which your Honor can take judicial notice of, is 25 miles an hour for that area.

That is all in evidence. But the plaintiff simply can shed no light. He doesn't say anything except, "I did not see anything." He did not see what was clearly there to be seen. "I didn't see anything. I blacked out. I do not remember anything except that around that locality I was traveling north," and I don't want to misquote him, but, "In that area, between W and V, I was traveling north on 4th Street at 25 miles an hour, 25 to 30," he said, "And I didn't see anything. I was looking straight ahead and then the accident happened. I remember nothing."

He did not say that the car appeared and did not stop, or he thought the car was going to stop. Nothing, just the barest assertion that an accident took place, and then everything else is presumed from it.

As a matter of fact, had I known this, I would have reserved my opening statement till the completion of the plaintiff's case, and then declined to even put on a case.

All we have is the bare assertion that an accident took place, and we can draw no inferences from that, I would submit, your Honor. By his own testimony, at the very minimum, he is guilty of contributory negligence as defined as a matter of law, I urge your Honor.

THE COURT: Gentlemen, this case has been on trial nearly a total of four days. I think it should go to the jury. I will reserve ruling on the motion till the jury has passed on it. I will submit it to the jury on Monday.

Do either of you have any proposed instructions yet?

MR. MANN: I do. There is one I did not prepare because I did not realize that it would take this turn, and that is the standard instruction on last clearance. ^{charge}

THE COURT: I don't think there is last clearance in this case.

MR. MANN: If the jury believes the testimony of the Hoffman boy that they were already considerably into the

intersection before he saw the Bentley vehicle, then I would submit, your Honor, not meaning to contradict you---

THE COURT: I appreciate your calling it to my attention.

MR. MANN: I submit then it would be proper, if the jury believes that.

THE COURT: What do you say to that?

MR. ELLIS: Certainly not, your Honor. I would say no. I would say there is no last clearance in this case for the reason you have got a Stop Sign here.

THE COURT: Even if you have a Stop Sign, if the Clewlow car stopped and proceeded into the intersection, and was half-way across the intersection when the Bentley car was, according to the Hoffman testimony, was 15 yards south, wouldn't the jury have a right to pass on the issue of last clearance as to whether or not Bentley saw, and had an opportunity to avoid the collision?

MR. ELLIS: Only if the---

MR. MANN: Excuse me, just one minute. If your Honor will recall, the police officer testified, and I think it was admitted as Mr. Bentley testified, there are three lanes there, and that he was in the middle lane, traveling in the middle lane. Also, the accident occurred in the middle lane so there was no swerving.

THE COURT: Also, the testimony is, as I remember, that the right-hand lane, which was nearest the plaintiff was not occupied by any vehicles at that time.

MR. ELLIS: I would say that this would be correct if the facts were the other way: if the Bentley vehicle had been the striking vehicle, then I would say it would have been a question of his doing something to avoid the accident. You see, then you have the further proposition of law that once one yields the right of way or stops in obedience to a Stop Sign, he has no right to proceed until he can negotiate the intersection safely; and the facts here are that the Clewlow vehicle struck the Bentley vehicle, not the reverse. If the situation were reversed, then I would not be urging the same argument. But under these circumstances, Mr. Bentley would submit to the Court that he had the right to assume that the driver of the Clewlow vehicle would obey the Stop Sign that he knew was there, and that he had the right to pass on through.

THE COURT: I will consider it over the weekend.

Mr. Mann, I notice you submitted an Instruction No. 2 in which you approach Section 22 of the Traffic Regulations. Was that offered in evidence?

MR. MANN: That's the Avoiding Colliding Regulation,

THE COURT: Was it offered in evidence by anyone?

It's not in evidence.

MR. MANN: I'm sorry. I thought I very clearly stated yesterday, your Honor, that I had a set of instructions covering the traffic regulations that I wanted.

THE COURT: No. No. As I recall the testimony yesterday, counsel for plaintiff offered three regulations by number.

MR. MANN: Yes, sir.

THE COURT: And you then said you wanted the same ones.

MR. MANN: I didn't mean to say that. I wanted one of the same ones, 99-C, but I said I have an instruction which I will have for your Honor which has the other instructions I want to be given to the jury, and I understood you to say that you would, without reference to who gave them, you would give those instructions if they were proper.

THE COURT: Because I was referring to the three instructions which I understood you were adopting along with the plaintiff.

MR. MANN: Just one of them. I did want to adopt it,

THE COURT: I don't want to take advantage of you---

MR. MANN: I'm real honest about that, your Honor. The only reason -- I had no idea --- The reason I didn't take up the Court's time---

THE COURT: Is this the only traffic regulations

you're offering?

MR. MANN: 22 and 99 (c) and 46 (a), in other words, three.

THE COURT: You asked for 46 (a) and 99 (c) and 10?

MR. MANN: I wouldn't want 10. All I wanted was one of his.

THE COURT: He asked for 49 (c). Do you have any objection to 22?

MR. ELLIS: Which section of 22?

MR. MANN: All the sections - a, b, and c.

THE COURT: They struck us, so I think, if the Court please, the one that embodies "collision" wouldn't be applicable.

MR. MANN: You can cause a collision without---

THE COURT: If you want me to reopen the case, I'll permit him to offer it on Monday, but I'm going to receive it now. The question is: Do you want me to reopen the case for it?

MR. ELLIS: I wouldn't require you to reopen the case.

MR. MANN: I would not mislead the Court.

THE COURT: I don't think you would. I will give a charge on these instructions, also include ten. It's not precisely the language you requested, but it will cover the subject matter.

Have you got your instructions?

MR. ELLIS: I do not. I was relying for the most part on standard instructions.

THE COURT: As a matter of fact, most of these are standard.

MR. MANN: Yes, your Honor.

MR. ELLIS: The only one I would ask to submit on Monday, well, two. I assume, Mr. Mann, you're asking for an instruction on contributory negligence, is that right?

MR. MANN: Oh, yes.

MR. ELLIS: In that regard, and if it's not covered by your Honor's standard instructions, I want the further qualifying instruction that even though the jury may find contributory negligence on the part of the plaintiff, it must be further demonstrated that this negligence contributed to and was a proximate cause of the accident.

THE COURT: Was a proximate cause?

MR. ELLIS: Was a proximate cause.

MR. MANN: I wouldn't object to that.

THE COURT: I will charge on contributory negligence.

MR. ELLIS: And an instruction that the plaintiff had a right to expect that the defendant vehicle would obey the Stop Sign.

MR. MANN: I object to that. There has been no evidence that he did not. If he could say he did not, it

would be one thing.

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THE COURT: I think I have to sustain the objection.

MR. ELLIS: Like I say, your Honor, I would like the privilege to draft one in that area.

THE COURT: You may do so Monday morning. If I won't do so, you'll at least have a record made of my ruling.

MR. ELLIS: I don't know. I'm sure the Court in its general instructions or standard instructions will tell the jury that once there is evidence of contributory negligence, the defendant has the duty of establishing it by a preponderance of the evidence.

MR. MANN: The same burden you have.

THE COURT: It shifts. The plaintiff has the burden of proof as far as negligence is concerned. When contributory negligence is alleged, the burden shifts to the defendant. It's as simple as that.

How much time do you want to argue?

MR. MANN: Thirty minutes.

THE COURT: I would like to get the case to the jury Monday morning. I suspect my charge may be longer than usual because there is a lot of law.

MR. ELLIS: I would not want to be so restricted. I will try to be brief. I would rather over-state the time than have your Honor cut me off.

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THE COURT: How much time for opening, 45 --
30 and 15? Will you cover your full case in your opening
statement?

MR. ELLIS: Yes, sir.

THE COURT: You may have the same if you want it.

MR. MANN: I would like it just in case.

THE COURT: Ten o'clock Monday morning.

(Whereupon, at 4:05 p.m., the above-named
case was recessed, to reconvene at 10 o'clock, Monday morning,
October 21, 1968.)

This is to certify that the foregoing transcript
of the trial of Bentley v. Clewlow is true and correct,
to the best of my knowledge.

Marie S. Taylor

United States District Court for the District of Columbia

[Caption Omitted in Printing]

FILED

OCT 21 1968

VERDICT AND JUDGMENT

This cause having come on for hearing on the 16th day of October, 19 68,

before the Court and a jury of good and lawful persons of this district, to wit:

Mrs. Sadie RosenbergMrs. Sylvia PodrogLeo E. AndersonJames R. WigginsJoseph S. BusseyMrs. Lois F. WilkinsOtey G. MahanBernard W. DoakSydney TolsonCharles W. DeBoeForrest S. FuruhashiMiss Clara L. Bell

who, after having been duly sworn to well and truly try the issues between

Carl T. Bentley and Mildred Bentley, plaintiffsand Carl W. Clewlow; defendant,

and after this cause is heard and given to the jury in charge, they upon their oath say this

21st day of October, 19 68, that they find the issues aforesaid in
themfavor of the plaintiffs and that the money payable to him by the defendant by reason of the
Seven Thousand Five Hundred Dollars (\$7,500.00) to
premises is the sum of Carl T. Bentley, and the sum of One Thousand One
Hundred and Twenty-Five Dollars (\$1,125.00) to Mildred Bentley.WHEREFORE, it is adjudged that said plaintiff Carl T. Bentley recover of the said defendant the sum of
Seven Thousand Five Hundred Dollars (\$7,500.00), without costs, and
that the said plaintiff Mildred Bentley recover of the said
defendant the sum of One Thousand One Hundred and Twenty-Five Dollars
~~together with costs~~ (\$1,125.00), without costs.

ROBERT M. STEARNS, Clerk,

By Joseph C. McGarraghy

Deputy Clerk.

Judge Joseph C. McGarraghy, Presiding.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
FILED Civil Division **FILED**

NOV 26 1968

OCT 28 1968

ROBERT M. STEARNS, Clerk

[Caption Omitted in Printing]

*11/26/68
 Motion denied
 W. J. [Signature]*

MOTION FOR JUDGMENT NON OBSTANTE VERDICTO

Comes now the defendant, Carl W. Clewlow, by his attorneys, Swingle and Mann, and moves the Court to grant a judgment non obstante verdicto in favor of the defendant for the following reasons:

1. The verdict was contrary to the evidence.
2. The verdict was contrary to the law.
3. A judgment N.O.V. should be granted because of the negligence of the plaintiff Carl T. Bentley.

A-memorandum of points and authorities in support of this motion is attached hereto and made a part hereof.

[Subscription Omitted in Printing]

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

FILED

OCT 29 1968

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR JUDGMENT NON OBSTANTE VERDICTO

1. The entire evidence from the plaintiff's own testimony was that he was traveling north on 4th Street, N. W. at approximately 2:00 a.m. on the morning of December 29, 1965 at a speed of between 25 and 30 miles per hour in a 25 mile per hour zone speed limit; that he had been playing poker for an hour to one and one-half hours with some persons unknown to him on T Street, N. W.; that he was taking a tranquilizer drug along with two other drugs for his heart condition prior to the accident but he had not consumed any alcoholic beverage; that he was looking straight ahead as he approached the intersection of 4th and W Streets, N. W. and did not recall whether or not he looked to the right or left; also that he did not look to the right or left nor did he see any other traffic or automobiles; that he did not slow down as he approached the intersection with W Street, N. W. and that he remembered nothing more until he was in Freedmen's Hospital. He likewise testified that the intersection of 4th and W Streets, N. W. was well lighted and that there was no difficulty in seeing and that the roadway was straight and level and the weather clear. (Emphasis supplied).

In addition plaintiff called Richard Hoffman, a passenger in defendant's vehicle, as his witness and asked him if there was a stop sign on W Street at the intersection and if a collision had occurred and the

witness replied in the affirmative. No other questions were asked of this witness.

Plaintiff called as his own witness, Police Officer Peterson, who testified that plaintiff's automobile was traveling in the middle of three lanes at impact; plaintiff's automobile struck a metal drain on the curb after impact and turned over and continued on for 79 feet from point of impact in a straight line; that the entire curb lane to plaintiff's right at the approach of the intersection was clear of vehicles; that defendant's automobile had come to rest partly in the intersection and partly on the sidewalk on the northeast corner of the intersection. Photographs of the scene and the automobiles after impact were introduced. The photographs indicated building lines did not hinder visibility for either vehicle approaching the intersection and that neither vehicle laid down any skid marks prior to impact. The photographs further indicated that the right front side of defendant's vehicle received extensive damage but that the headlight on the other side of defendant's vehicle was virtually undamaged. The police officer testified that he had been unable to smell plaintiff's breath to ascertain odor of alcohol while he lay in the streets because of his bad breath but that he had more urgent matters to attend to. He testified positively that plaintiff appeared to be under the influence at Freedmen's Hospital within an hour after the accident, had the odor of alcohol on his breath and he refused to submit to urinalysis but instead wanted his lawyer to be called.

The remainder of plaintiff's case consisted of five

physicians, three nurses, etc., all dealing only with the injuries sustained by the plaintiff.

The hospital records which were admitted in evidence indicated that on admissions to the hospital previous to the accident, the plaintiff had admitted to heavy consumption of alcoholic beverages although the Trial Judge would not permit defendant's attorney to question male plaintiff on this or the fact that his driver's license had been previously revoked for the offense of "driving under the influence."

At the close of plaintiff's case, defendant moved for a directed verdict, first on the grounds that the plaintiff had failed to establish a prima facie case and secondly because male plaintiff was guilty of contributory negligence as a matter of law. This motion was denied pending defendant's case being presented.

2. The defendant's case consisted of three witnesses:

Carl Clewlow, defendant, testified that he had purchased the car from a friend; that it had only 24,000 miles on it; that mechanically it was in perfect condition; that all four tires were new; the Roger Burnham was driving the car with his permission; that Mr. Clewlow had taken his 16 year old daughter to the social gathering at 11:00 p.m. and had seen his son and Roger Burnham at the social gathering and that there was an abundance of good food and CocoColas being served at the gathering.

Richard Hoffman testified that he, Sydney Clewlow and Roger Burnham left the gathering off MacArthur Boulevard at approximately 1:00 a.m. taking a young lady friend of Sydney Clewlow's home first and

that at the time of the accident Roger Burnham was driving, Sydney Clewlow was seated in the rear seat and that he was seated in the right front seat; that the car was a stick shift one; that they had stopped at the stop sign 16 1/2 feet from the curb line of the intersection; had proceeded in low gear this 16 1/2 feet and had almost reached the center of the intersection when he saw the plaintiff's car coming at between 50 and 60 miles per hour; that he had not had time to say anything prior to impact; that the defendant's automobile was traveling between 5 and 8 miles per hour at time of impact and that he heard no brakes being applied or horn being sounded.

Doctor Harvey Ammerman testified that plaintiff had fully recovered from the injuries sustained in the accident; that the tranquilizer drug being taken by plaintiff was one that, even in normal doses, should not be taken by one who was going to operate machinery or drive an automobile and that the adverse effects of the drug on the user's reaction time and alertness was compounded when even one drink of alcoholic beverage was taken.

3. The above two paragraphs, it is submitted, correctly summarize the evidence. It is submitted that it clearly establishes that plaintiff was guilty of negligence, or at a minimum, contributory negligence in that from plaintiff's own lips, he admitted:

(a) That he did not slow for the intersection (a violation of traffic regulations admitted in evidence).

(b) That he did not look effectively and see what was

clearly there to be seen.

(c) That he failed to give full time and attention and he did not keep his automobile under control and avoid hitting the defendant's vehicle in that the entire curb lane on plaintiff's right was free and clear of any vehicles and plaintiff took no evasive action to avoid the accident. (A violation of traffic regulations admitted in evidence.)

(d) That he was driving at between 25 and 30 miles per hour in a 25 mile per hour speed limit area. (A violation of traffic regulations admitted in evidence.)

It is submitted that if only plaintiff's own testimony is considered, aside from the other testimony indicating excessive speed, from the final position of plaintiff's vehicle after the accident, the damage to the vehicles, the police officer's testimony, and the testimony of the surviving passenger of defendant's vehicle, the Court is fully justified in and should grant this motion for a judgment N.O.V.

As stated in Federal Practices and Procedures, (Barron & Holtzoff) Summary Judgments, §1232.1, 3, it is only when conduct can be said as a matter of law to have fallen below the standard of a reasonably prudent person that the question of contributory negligence may be taken from the jury and determined by the Court. In the case at issue, by the plaintiff's own testimony he was negligent.

In a recent opinion of the United States Court of Appeals for the 6th Circuit, filed July 5, 1968, the Court affirmed the summary judgment granted defendant by the United States District Court for the

Southern District of Ohio where plaintiff testified that he did not know whether he looked to the right or to the left before the collision. Allen, et al v. N.Y.G. Co., Commerce Clearing House Automobile Negligence Cases, 1968-1, p. 19085, 85.

It is further submitted that there is no credible evidence proving that the defendant was negligent. Only by sheer conjecture and speculation, from the sole fact that there was an accident, could the jury have found that defendant was negligent.

The instant case is not the typical intersection collision with contradicting evidence as to speeds and distance. By the plaintiff's own testimony, he was contributorily negligent at the very least. Cases are legion, starting even before Brown v. Clancy, 43 A.2d 296, that plaintiff's duty is not merely one of looking but one of observation and that when a litigant testifies that he did look and did not see, such ineffectual looking has no more legal significance than if he had not looked at all. Here, we have this fact plus his own admission that he took no evasive action to avoid the colliding and that he was traveling in excess of the speed limit. Here, also, the plaintiff is not sure whether or not he looked at all.

It is therefore respectfully submitted that a judgment N.O.V. should be granted in this cause for these and such other reasons as will be urged at oral argument.

[Subscription Omitted in Printing]

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E I L E D

NOV 1-1968

OPPOSITION TO MOTION FOR JUDGMENT
NON OBSTANTE VERDICTO

Comes now the plaintiff, by and through his attorneys, and opposes defendant's Motion for Judgment Non Obstante Verdicto, for the following reasons:

1. The verdict was amply supported by the evidence .
2. The law supports the verdict of the jury.
3. The questions of negligence and contributory negligence were properly submitted to the jury and both questions were resolved against the defendant.
4. The court is referred to the attached memorandum of points and authorities.

[Subscription Omitted in Printing]

[Certificate of Service Omitted in Printing]

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E I L E D

NOV 1-1968

MEMORANDUM IN SUPPORT OF OPPOSITION
TO MOTION FOR JUDGMENT N.O.V.

The law in this jurisdiction is clear that ordinarily, a motion for judgment n.o.v. should not be granted except where the evidence is so one-sided as to leave no room for doubt. If fair minded men may honestly draw a different conclusion as to the existence or non-existence of negli-

gence, the question is not one of law for the court but of fact for the jury. *McWilliams v. Shepard*, (D. C. Circuit), 127F.2D.18; *Gunning v. Cooley*, 281U. S.90, 74 L.ED.720.

Judge Pine of this court in the case of *Stutler v. Heflin*, 46F. SUPP.539 that in considering such a motion the court must construe the evidence most favorably to the plaintiff and give the plaintiff the full effect of every legitimate inference therefrom. If then, upon the evidence so considered, reasonably men might differ, the motion should not be granted.

A fair appraisal of the evidence in the instant case could not lead one to the conclusion that such evidence was so one-sided as to leave no room for doubt respecting the absence of negligence on the part of the defendant or contributory negligence on the part of the plaintiff. The plaintiff is not willing to accept the defendant's summary of the evidence set forth in his memorandum as being accurate. However, plaintiff feels it unnecessary to recite a detailed counter-statement of the evidence here. Suffice it to say that the physical evidence, the documentary evidence and the testimony offered by both sides, established that at the time of the collision, the plaintiff was proceeding north on 4th Street; that 4th Street, N. W. was the favored highway; that the defendant vehicle was proceeding east on W Street near the intersection of 4th Street; that east bound traffic on this occasion was controlled by a stop sign; that there was a suggestion of speed on the part of the plaintiff's vehicle; that a police officer in his testimony which was demonstrated to have been contradicting suggested that the plaintiff had been drinking; that the vehicles collided in the middle of the intersection of 4th and W Streets; that the defendant vehicle struck plaintiff's vehicle broadside at or a-

round the driver's door; and that both vehicles were demolished. Based on such evidence and applying the pertinent traffic regulations which were introduced, it seems obvious that reasonable minds could differ with respect to whether the defendant was negligent and whether or not the plaintiff was guilty of contributory negligence. The court very properly submitted these issues to the jury for decision. Both issues were resolved in favor of the plaintiff.

With respect to contributory negligence, The Court of Appeals for the 8th Circuit in the case of Ottertail Power Company v. Duncan, 137 F.2D157 said:

"Contributory negligence, as a matter of law, exists only where the facts are such that a determination thereof could not cause doubt or question in the minds of reasonable men. One of the purposes of a jury of 12 persons is to have such persons, acting as a group, determine matters that might be of doubt in the mind of one or another. It is only where the facts are so persuasive that reasonable men, exercising impartial and sound judgment, could not differ that a court is justified in preempting a jury's prerogatives by verdict directions or judgment notwithstanding the verdict."

Here, it is submitted, that the evidence did not establish contributory negligence as a matter of law. Therefore, it is respectfully urged that the jury's verdict be permitted to stand.

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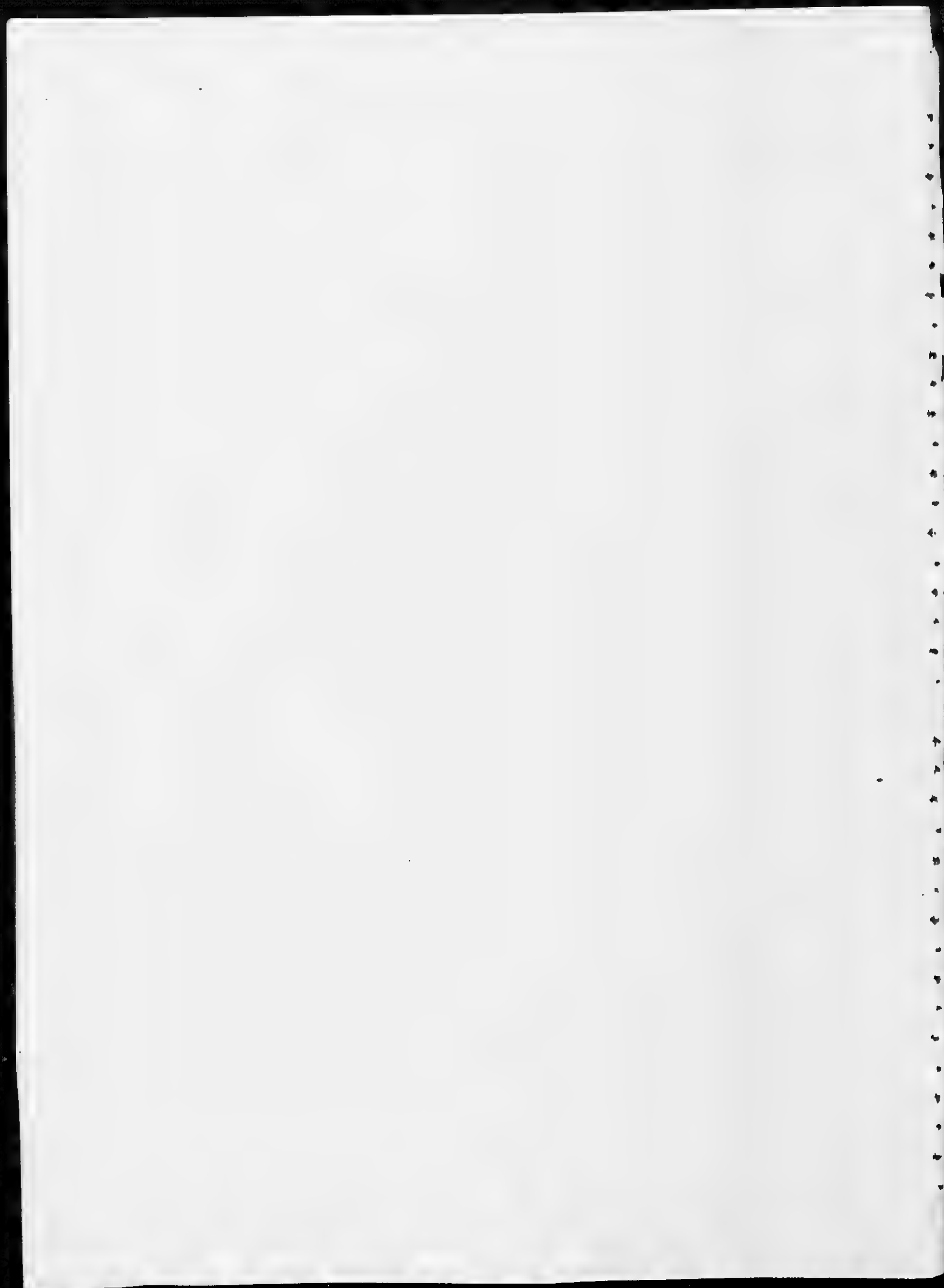
DEC 13 1968

NOTICE OF APPEAL

Notice is hereby given this 11th day of December, 1968, that Carl W. Clewlow hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on October 21, 1968 and the order (fiat) denying defendant's motion for judgment N. O. V. entered on November 26, 1968 in favor of Carl T. Bentley, et al against Carl W. Clewlow.

[Subscription Omitted in Printing]

[Certificate of Service Omitted in Printing]



IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,666

CARL T. BENTLEY
and
MILDRED BENTLEY,

v.

CARL W. CLEWLOW,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

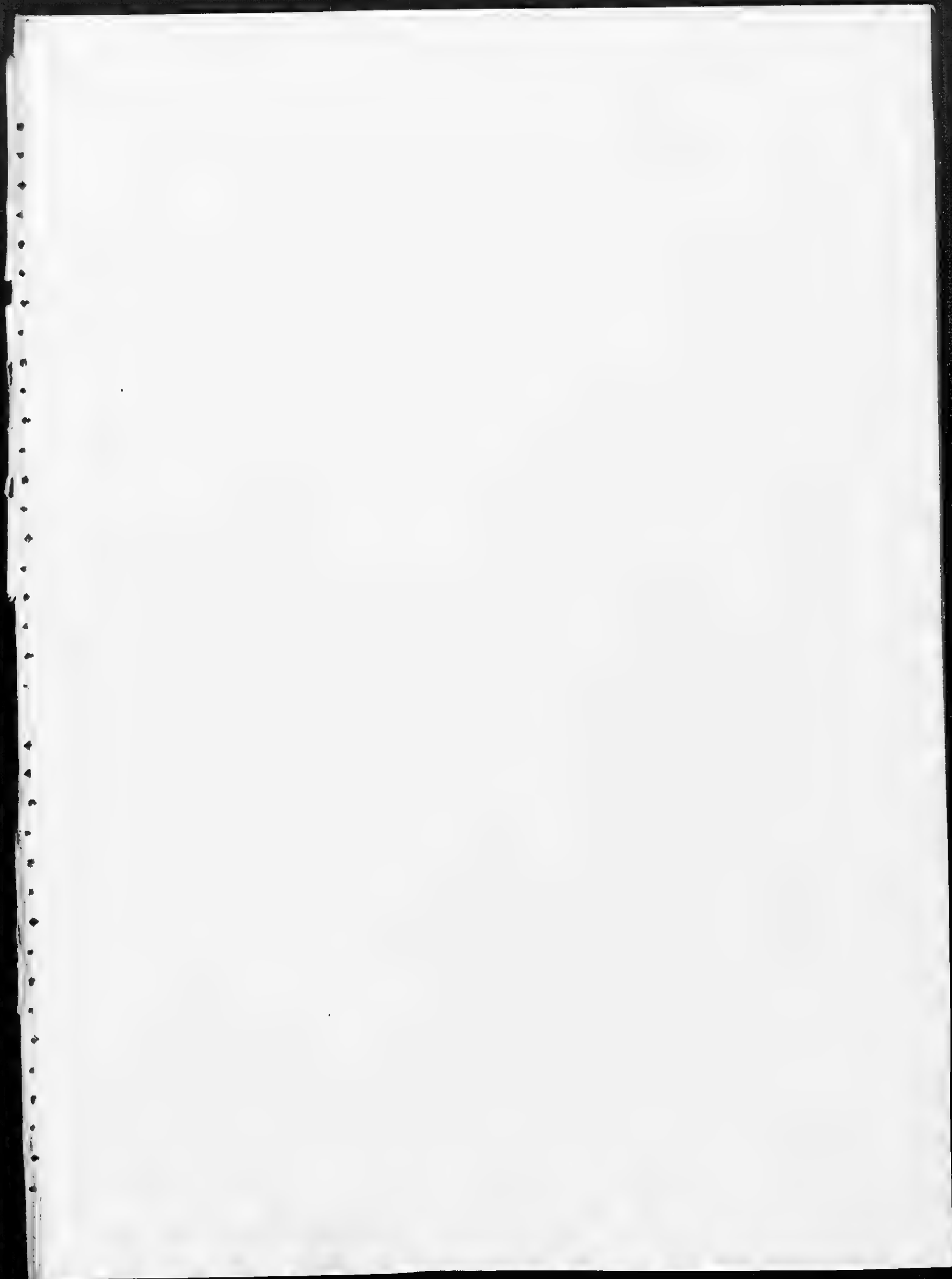
BRIEF FOR APPELLANT-DEFENDANT

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 28 1969

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(i)

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,666

CARL T. BENTLEY
and
MILDRED BENTLEY,

v.

CARL W. CLEWLOW,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT-DEFENDANT

ISSUES PRESENTED

1. The plaintiffs failed to establish a *prima facie* case.
2. The trial court erred in denying defendant's motion for a directed verdict at the close of the plaintiffs' case and at the close of the defendant's case in that the evidence viewed most favorably to the plaintiffs indicated that at a minimum the plaintiffs were guilty of contributory negligence as a matter of law, and that plaintiff's testimony established negligence was the proximate cause of plaintiffs' injury.

3. The trial court erred in denying the defendant's motion for judgment *non obstante veredicto*.

NOTE: This case has not been previously before this Court.

STATEMENT OF THE CASE

This is an appeal by Carl W. Clewlow, the defendant in the United States District Court for the District of Columbia. The plaintiffs below were Carl T. Bentley the driver of the automobile involved in the collision suing for personal injuries and Mildred G. Bentley, owner of the automobile whose claim was for the loss of the automobile. (App. 3-7, 13-18)

The case arose out of a collision between two automobiles at 2:00 a.m. on the morning of December 29, 1965 in the intersection of 4th and W Streets, N.W. in the District of Columbia. The automobile driven by male plaintiff and owned by his wife was traveling north on 4th Street. The automobile traveling east on W Street, N.W. was owned by defendant, Carl W. Clewlow and was being driven with his permission by Roger Burnham, deceased and occupied by defendant's son Sidney Clewlow and Richard Hoffman. Roger Burnham and Sidney Clewlow were both killed in the collision but Richard Hoffman survived and was called as a witness by plaintiffs.

The plaintiffs called three witnesses on the issue of negligence. These were the male plaintiff, Police Officer Peterson, and Richard Hoffman, passenger in the front seat of defendant's automobile.

At the close of plaintiff's case, counsel for defendant moved for a directed verdict on the grounds that plaintiff had failed to establish a *prima facie* case. (App. 143)

Motion was denied by the trial judge (App. 145) although trial judge stated that "it posed quite a problem with me as to whether or not the plaintiff had made out or would be able to make out a *prima facie* case." (App. 145)

Defendant called three witnesses; Doctor Harvey Ammerman who testified as to effects of tranquilizer male plaintiff admitted taking; Richard Hoffman, a passenger in vehicle owned by defendant; and the defendant Carl W. Clewlow.

At the close of defendant's case, counsel for defendant renewed motion for directed verdict. (App. 202, 204, 209, 211) This was opposed by counsel for plaintiffs. (App. 205-209)

The trial judge reserved ruling on the motion until jury had passed on it. (App. 211)

Jury returned a verdict for male plaintiff for \$7,500.00 and for female plaintiff for \$1,125.00 on October 21, 1968. (App. 219)

Counsel for defendant filed motion for judgment *non obstante verdicto* (App. 220) which was opposed by plaintiffs. (App. 227)

The motion for judgment *non obstante verdicto* was denied *fiat* by the trial judge on November 26, 1968. (App. 220)

Notice of appeal was filed December 13, 1968 (App. 230) and the record was designated on December 23, 1968.

Transcript of the record was filed in this Court on January 21, 1969.

STATEMENT OF FACTS RELEVANT TO ISSUES

1. Facts Relevant To Issue That Plaintiffs Failed to Establish a Prima Facie Case

In summary, the three witnesses, on the issue of negligence, called by the plaintiffs testified as follows:

A. There was a collision involving vehicles belonging to plaintiff and defendant at approximately 2:00 a.m. on the morning of December 29, 1965 in the intersection of 4th and W Streets, N.W., in the District of Columbia. (App. 87)

B. The male plaintiff was injured in the accident and Roger Burnham the driver of the automobile owned by defendant and Sidney Clewlow the son of defendant were both killed in the collision. (App. 101, 103, 104, 113)

C. The weather, on the morning of the accident was clear, the roadway as asphalt, level and dry; the intersection was well lighted and there were no obstructions to visibility of either driver of the vehicles involved. (App. 89, 110)

D. The police officer testified that the point of impact was after the east bound vehicle on W Street owned by defendant had proceeded into the intersection 36½ feet beyond the stop sign for W Street, N.W. and after the northbound vehicle operated by male plaintiff had proceeded 14 feet into the intersection in the center lane. (App. 91, 109, 110)

E. The Police Officer testified further that both vehicles were badly damaged; that the right front fender of the automobile belonging to defendant was almost pulled off and that the vehicle operated by male plaintiff, after impact, proceeded in a straight line for some distance after impact, hit a sewer drainage iron grate,

turned over on its top and came to rest 79 feet from point of initial impact. (App. 93, 96, 106, 107, 108) The police officer also testified that male plaintiff appeared to be under the influence of alcohol at the hospital an hour after the accident, that he smelled the odor of alcohol on male plaintiff's breath, that male plaintiff refused to answer questions at the hospital after the accident instead asking for his wife to call a lawyer, and that male plaintiff refused to submit to blood test or urinalysis to determine the presence or absence of alcohol. (App. 103-106, 111, 112)

F. Richard Hoffman, passenger in the front seat of automobile owned by defendant testified that they were traveling east on W Street, N.W. before the accident and that he recalled a stop sign at the intersection of W and 4th Streets, N.W. (App. 134-137) This was his only testimony as plaintiff's witness.

G. The male plaintiff testified that he was unemployed, had previously had a heart attack and prior to accident had taken drugs known as Lufa, Comiadine and Butasol, "a tranquilizer"; that he had been in a poker game in the 900 block of T Street, N.W. on the night of the accident and had left about 1:45 a.m. alone and proceeded through T Street to 4th Street where he made a left turn to proceed to his home. He testified that he proceeded down 4th Street at 25-30 miles per hour in the center lane and recalled proceeding through the block of 4th Street between V and W Streets and did not remember anything that occurred after passing through that block. He did not recall being in a collision. On cross-examination he was confronted with his deposition (App. 23) where he could not state whether or not he had looked to his left or right as he approached the intersection of 4th and W Streets and he reiterated that he recalls looking straight ahead. (App. 40-46, 70)

2. Facts Relevant To Issue That Court Erred In Not Granting Defendant's Motion For Directed Verdict At Close of Plaintiffs' Case And At the Close of Defendant's Case.

Facts stated under Caption No. 1 above are also relevant to issue that the trial court should have granted defendant's motion in that plaintiffs' evidence indicated that plaintiff was negligent as a matter of law.

In summary, male plaintiff testified as follows:

A. He was driving at speeds of 25-30 miles per hour as he approached the intersection.

B. The maximum speed limit for 4th Street, N.W. was 25 miles per hour.

The facts brought out by plaintiffs' three witnesses as to liability are stated under Caption No. 1 above and are incorporated herein by reference.

The three witnesses presented by the defendant, testified, in summary as follows:

C. Richard Hoffman, plaintiffs' witness and passenger in front seat of defendant's automobile testified that the defendant's automobile was in good condition, had only 24,000 miles on it and had all new tires (App. 148); that there was a stop sign for W Street at the intersection of 4th Street, N.W. at which they had stopped (App. 154); that they had then started out into the intersection still in low gear and traveled between five and eight miles per hour (App. 154, 155) and he had observed the automobile operated by male plaintiff approaching them at a speed of between 50 and 60 miles per hour and the car took no evasive action and he heard no sound of brakes being applied. (App. 155, 156)

D. Doctor Harvey Ammerman testified that the tranquilizer taken by the plaintiff was one that should not be taken by anyone who was going to drive an automobile or operate any kind of machinery (App. 188) and that additionally a person taking such drug would have a much more intense reaction to alcohol and that the combination would greatly diminish the reaction time of the person taking the drug with alcohol. (App. 188-190)

E. Carl W. Clewlow, defendant, testified as to the excellent condition of the vehicle owned by him involved in the collision (App. 191-193); that Roger Burnham was operating the automobile with his permission (App. 195); that he had taken his sixteen year old daughter to the social gathering at the Manning residence on the night of the accident and prior thereto and had seen his son there. (App. 196)

3. **Facts Relevant to Issue That Court Erred in Denying Defendant's Motion for Judgment Non Obstante Verdicto.**

All of the facts stated under Captions No. 1 and No. 2 are considered relevant and are incorporated herein by reference. See also Defendant's Motion for Judgment N.O.V. (App. 220) and Plaintiff's opposition thereto (App. 227).

SUMMARY OF ARGUMENT

There was no competent evidence submitted by plaintiffs that the operator of defendant's vehicle was negligent. The only evidence was that an accident involving the two vehicles occurred at the time and place alleged. Any inference of negligence on the part of defendant's operator would *have* to be drawn *solely* from the fact that an accident occurred whereas the legal inference is that neither party was negligent.

There was substantial evidence that male plaintiff was negligent. He admitted traveling in excess of the legal speed limit; he admitted taking a tranquilizer drug prior to the accident and he denied remembering the collision but on deposition stated that he was looking straight ahead and did not remember whether he looked to the right or to the left. The police officer called by plaintiffs' testified that he smelled the odor of alcohol on male plaintiff's breath; that male plaintiff appeared to be under the influence of alcohol an hour after the accident at the hospital and that he refused to talk to him and kept demanding his wife so that she could call a lawyer. The police officer also testified that collision occurred when plaintiffs' vehicle was only 14 feet into the intersection but that defendant's vehicle had proceeded $16\frac{1}{2}$ feet from the stop sign to the curb line and then 20 feet into the intersection or a total of $36\frac{1}{2}$ feet. The police officer also testified as to what happened to the vehicles after impact clearly indicating that the plaintiff vehicle was traveling at a high rate of speed in that after being struck in the left side by defendant's vehicle, it continued in a straight line for some distance, struck a sewer grating with its right hub cap, turned over and continued on its top to a point 79 feet from point of impact. The defendant's vehicle after impact proceeded only 10 feet past the point of impact and came to rest on the northeast corner of the intersection partly on the sidewalk and partly in the street. (App. 90) The police officer also testified, as did the male plaintiff, that plaintiff vehicle was in the center lane and that the right hand lane was free of traffic or parked cars but that there was no evidence of brakes applied or any evasive action being taken.

Richard Hoffman, passenger in front seat of vehicle owned by defendant, was called by plaintiff and testified as to excellent condition of defendant's automobile; that defendant's operator had stopped at the stop sign, proceeded $16\frac{1}{2}$ feet to the curb line in low gear and then out half way across the intersection when he observed

the vehicle driven by the male plaintiff approaching them at 50-60 miles per hour; and that no horn was heard or any evasive action taken.

The physician called by defendant testified that the tranquilizer that male plaintiff admitted taking prior to the accident was one that should not be taken by anyone who was going to operate a motor vehicle or any type machinery afterwards.

In summary, there was not a scintilla of evidence that the deceased operator was negligent nor was there any evidence that could in any way overcome the legal inference that defendant's operator was not negligent. In contrast, there was substantial evidence from the plaintiffs' own witnesses; the male plaintiff, the police officer, and Richard Hoffman the passenger in defendant's vehicle; that the male plaintiff was negligent. The police officer and Richard Hoffman were called by the plaintiffs as their witnesses, but not under Federal Rules of Civil Procedure Rule No. 43.

ARGUMENT

1. The Appellee-Plaintiff Failed to Establish A Prima Facie Case

The plaintiffs charged that the driver of the defendant's automobile was negligent and such negligence was the sole proximate cause of the accident and injuries sustained by them. (App. 4) The only evidence introduced by them was that a collision occurred between plaintiffs' automobile, being operated in the center lane when it was 14 feet into the intersection, and defendant's automobile in low gear after it had stopped for a stop sign and had thereafter proceeded 36½ feet from the stop sign into the intersection which is approximately two-thirds way into the intersection. (App. 91) No inference of negligence may be drawn from the mere happening of

an accident and the legal presumption is that neither party was negligent and that both parties exercised due care. The burden of proof is upon the party charging negligence to overcome this presumption of due care by a preponderance of the evidence and to prove that the negligence, if established, was the proximate cause of the accident. *Martin v. United States*, 96 U.S. App. D.C. 294, 225 F.2d 945.

Res ipsa loquitur was not introduced into this case either in the pleadings, at pre-trial or during the trial itself. It is submitted that a *prima facie* case exists only when evidence is introduced which suffices for the proof of particular facts until contradicted and overcome by other evidence. *Dodson v. Watson*, 110 Texas 355, 220 S.W. 771, 772, 11 A.L.R. 583. A "*prima facie* case" is one which is apparently established by evidence adduced by plaintiff in support of his case up to the time such evidence stands unexplained and uncontradicted. *Morrison v. Flowers*, 308 Ill. 189, 139 N.E. 10, 12.

It is submitted that in this case, the only evidence introduced by the plaintiff is that a collision occurred in the intersection and that it occurred between an automobile driven by male plaintiff and an automobile owned by defendant and being operated with his consent by Roger Burnham, killed in the collision. Plaintiffs' evidence showed that prior to the collision, male plaintiff was driving in the center lane at 25 to 30 miles per hour in a 25 mile speed limit zone, that the right hand lane was clear of traffic (App. 23, 43, 44) and that the collision occurred after plaintiffs' vehicle had proceeded 14 feet into the intersection and the defendant's vehicle in low gear was 20 feet into the intersection and 36½ feet from the stop sign and that after the collision the plaintiffs' vehicle had proceeded in a straight line, turned over and finally came to a stop 79 feet from the initial point of impact. (App. 108)

There was no evidence of any act of negligence on the part of the operator of defendant's vehicle. As the United States Court of Appeals for the Fifth Circuit stated on December 18, 1968, *Brown v. Seaboard Coast Line R.R.*, on December 18, 1968, No. 25,752, C.C.H. 1969, Automobile Negligence Cases (pages 20, 169), a directed verdict for the railroad was affirmed when no evidence of the railroad's negligence was offered. The Court stated that neither the engineer nor the plaintiff was able to testify as to how the car had gotten into the intersection just prior to its being struck by the locomotive and no other evidence was introduced.

There was no evidence of negligence on the part of the defendant and based on this fact at the close of plaintiffs' case, attorney for defendant moved for a directed verdict on the grounds that the plaintiffs had failed to establish a *prima facie* case. (App. 143) This motion was denied by the trial court (App. 145) although the trial judge stated that "*It posed quite a problem with me as to whether or not the plaintiff has made out or would be able to make out a prima facie case.*" (App. 145) (Emphasis supplied)

In a recent Florida case, *Conda, et al., v. Plain*, Florida District Court of Appeals, Second District No. 68-129 (1968) (filed Oct. 16, 1968, CCH Automobile Negligence Cases, 1968, page 19,585), the minor plaintiff testified that he remembers operating his motor bike near the location of the accident but remembers nothing more until waking up in a hospital several days later. In affirming a directed verdict for defendant, the court stated that the plaintiff had failed to prove any act of negligence on the part of the defendant.

In the case of *Riss & Company, Inc. v. Association of American Railroads, et al.*, 187 F. Supp. 306 (1960) the District Court held that the mere scintilla of evidence is insufficient to allow a case to go to the jury and that substantial evidence must be present. This

case also held the party is not entitled to rely on inferences which are unreasonable and the jury may not speculate.

In the case of *Baltimore & O. R. Co. v. Postom*, (1949) 85 U.S. App. D.C. 207, 177 F.2d 53, the court held that to justify submission of a case to the jury and to permit verdict to stand, there must be *substantial evidence* to support either conclusion that may be reached, and a mere scintilla of evidence is not sufficient. This case also held that *substantial evidence*, necessary to support verdict, is evidence of such quality and weight as would be sufficient to justify a reasonable man in drawing inference of fact that is sought to be sustained. (*Emphasis supplied*) In the instant case, it is submitted, the fact sought to be sustained is that the deceased driver of defendant's automobile was negligent and such negligence was the proximate cause of plaintiffs' injury.

In the case of *Shewmaker, et al., v. Capital Transit Co.*, 143 F.2d 142, this court held that in a negligence action, the burden is on plaintiff to establish negligence and injury alleged, and, if evidence fails *adequately* to support either element, defendant's motion for directed verdict should be granted. (*Emphasis supplied*) In this same case, the court held that a mere scintilla of evidence was not sufficient to justify a denial of defendant's motion for a directed verdict.

In the instant case, it is submitted, there are no controverted facts. That there was a collision; that there were injuries and where the collision took place were the only facts presented and they were not controverted. If, from these facts, one is permitted to draw an inference that one of the parties was negligent, then the well-established rule that no inference may be drawn from the mere happening of an accident is meaningless and the legal presumption that neither party acted in a negligent manner means nothing.

2. The Trial Court Erred in Denying Defendant's Motion for a Directed Verdict at the Close of the Plaintiffs' Case and at the Close of the Defendant's Case in that the Evidence Viewed Most Favorably to the Plaintiffs Indicated that at a Minimum the Plaintiffs Were Guilty of Contributory Negligence as a Matter of Law, and that Plaintiffs' Testimony Establishing Negligence Was the Proximate Cause of Plaintiffs' Injury.

The law is well settled that if a litigant looks but fails to see that which the evidence conclusively shows is there to be seen, he is contributorily negligent as a matter of law. *Brown v. Clancy*, D.C. Mun. App., 43 A.2d 296. The male plaintiff testified that he looked straight ahead just prior to the accident. (App. 23) Plaintiff failed to see what was there to be seen. The evidence was undisputed that male plaintiff was traveling in excess of the 25 miles per hour speed limit in that he was traveling between 25 and 30 miles per hour. (App. 23, 43)

The evidence was undisputed that the male plaintiff took no evasive action although the lane on his right was clear of all traffic. (App. 44) There was testimony by the plaintiff's own witness Richard Hoffman that the male plaintiff's vehicle as it approached the intersection appeared to be traveling between 50 and 60 miles per hour. However realizing that in a motion for a directed verdict that the plaintiff should be given credence to the plaintiff's own testimony that he was proceeding 25 to 30 miles per hour, this still means that he was traveling between 36½ to 44 feet per second and had evasive action been taken it is obvious that the collision could have been avoided.

The male plaintiff admitted that he had taken a tranquilizer on the day of the accident and a medical expert testified that this particular tranquilizer should not be taken by one going to operate a motor vehicle and the effects of alcohol taken thereafter were greatly intensified. (App. 188-190)

The police officer testified that he smelled alcohol on male plaintiff's breath, that male plaintiff appeared to be under the influence; and that his vehicle, after the collision, traveled in an almost straight line some 79 feet from point of impact even after striking a curb and turning over even though defendant's vehicle had struck the left side of plaintiffs' vehicle. (App. 94, 108) It is submitted that this certainly gives rise to the strong suggestion of excessive speed on the part of the plaintiff's vehicle.

The male plaintiff stated that he did not remember the collision, he did not remember looking to the right or left, and all that he remembered was that he was looking straight ahead. (App. 23, 70)

At the close of defendant's case, his counsel renewed the motion for a directed verdict citing as grounds therefor the reasons previously stated to the court (App. 202) and further stated that the evidence clearly established that, as a matter of law, the plaintiff was guilty of contributory negligence as a minimum. (App. 203, 204) Counsel for plaintiffs argued in opposition to the motion, among other things, that the jury could decide whether they were willing to accept the testimony of plaintiffs' own witness Richard Hoffman as to the speed of appellee-plaintiffs' vehicle. (App. 205-211)

The testimony of the defendant's witnesses established an even stronger case for the defendant in that there was no testimony favoring the plaintiffs' case. To the contrary, the testimony of Richard Hoffman, who was later called by the defendant, was the plaintiffs' vehicle was traveling at between 50 and 60 miles per hour just prior to the collision; that defendant's vehicle had stopped for the stop sign located some 16½ feet from the W Street curb line and had then proceeded in low gear at 5 to 8 miles per hour some 20 feet into the intersection when the collision occurred. The defendant as well as Richard Hoffman testified as to the excellent mechanical condition of the defendant's vehicle and Doctor Harvey Ammer-

man's testimony was highly adverse to the male plaintiff in that Doctor Ammerman testified that the tranquilizer male plaintiff admitted taking the day of the accident should not be taken by one prior to operating a motor vehicle.

In a Fifth Circuit case, *Herron v. Maryland Casualty Co.*, 347 F.2d 357, the United States Court of Appeals stated that under Louisiana Law, mere occurrence of an accident does not give rise to presumption of negligence and that in Louisiana tort actions plaintiff has the burden to prove negligence as affirmative fact. It is submitted that this is likewise the law in our jurisdiction.

In the case of *Fidelity and Casualty Co., of New York v. Funel, et al.*, 383 F.2d 42, the United States Court of Appeals found that reasonable men could not conclude from the evidence in the record that the defendant had been negligent and reversed and rendered judgment in favor of defendant. In that case the Court held that negligence is not presumed from the mere happening of an accident.

In the 1961 case of *Turner v. Atlantic Coast Line Railroad, Co.*, 292 F.2d 586, the United States Court of Appeals stated,

"The current principle controlling direction of a verdict is that a trial judge may grant a directed verdict only *when there is no evidence which, if believed, would authorize a verdict against the movant.*" (Emphasis supplied)

A summary of the testimony of the defendant's witnesses has already been stated, but there was not a scintilla of evidence from which the jury could infer that the operator of the defendant's vehicle was negligent unless the inference be drawn from the fact that there was a collision and it is submitted that the only legal inference from the fact that there was an accident is that neither of the parties acted negligently.

As the Court of Appeals stated in the case of *Federal Ins. Co. v. Summers*, 403 F.2d 971, scintilla of evidence is not enough to warrant submission of issue to jury. In this same case, the Court, in discussing the fact that the evidence must be viewed in the light most favorable to plaintiff, stated that the rule did not mean that plaintiff had the right to get to the jury unless the only evidence is testimony against him.

Certainly the evidence given by the plaintiffs' three witnesses showed no evidence that defendant was negligent. Contrarily, both the passenger in defendant's vehicle and the police officer's testimony was totally favorable to defendant. Even the testimony of male plaintiff contained nothing from which an inference of defendant's negligence could be drawn. As the Court of Appeals stated in *L. W. Foster Sportswear Co. v. Goldblatt Bros., Inc.*, 356 F.2d 906, 908 (7th Cir. 1966) that the reviewing court must take only evidence most favorable to plaintiff and draw inference from it, it is submitted that there must be evidence, other than the fact that the collision occurred, from which inferences may be drawn.

Despite the fact that there was absolutely no evidence as to defendant's negligence, there was abundant evidence that, as a matter of law, male plaintiff was negligent and such negligence was the proximate cause of the accident. To admit that one was looking straight ahead while traveling at 25-30 miles per hour in an area where the legal limit is 25 miles per hour in approaching an intersection; that he had taken tranquilizers prior to the accident and that he did not know whether or not he looked to his right or left as he approached the intersection, all, it is submitted, constitute admissions of negligence on the part of the male plaintiff.

This fact, coupled with the testimony of the police officer, called by plaintiff, that male plaintiff appeared under the influence, had alcohol on his breath and refused to discuss the accident, calling

instead for his wife to call an attorney, constituted uncontroverted, testimony from plaintiffs' own witnesses that he was negligent as a matter of law.

3. The Trial Court Erred in Denying the Defendant's Motion for Judgment Non Obstante Verdicto

The facts of both plaintiffs and defendant's evidence have previously been summarized. It might be argued that the jury might have inferred that defendant's operator failed to stop for the stop sign. However, there is not one shred of evidence that he did not, and in the absence of any contradictory testimony, a witness is presumed to speak the truth. There is testimony from passenger Richard Hoffman, that defendant's operator did stop for the stop sign and then proceeded in low gear at five to eight miles per hour 20 feet into the intersection. The jury could not have drawn a legitimate inference that defendant's operator was speeding. This would be in direct conflict with all of the testimony of plaintiffs' witnesses and would constitute sheer speculation, not reasonable inference. As this Court said in the case of *Seganish v. Safeway Stores, Inc.*, U.S. App.D.C. No. 20,733, decided September 24, 1968, juries cannot be permitted to speculate but they may draw any and all inferences *logically deducible* from the evidence present. (Emphasis supplied) It is submitted that if the evidence presented by both plaintiffs and defendant was totally lacking in evidence of negligence on the part of the defendant, then there is no evidence from which inferences may logically be deduced.

It is submitted that there must be an evidentiary basis for the jury's verdict, otherwise it can not be permitted to stand. *Galloway v. United States*, 319 U.S. 372, 63 S. Ct. 1077, 87 L. Ed. 1458. *Blount Brothers Corp. v. Reliance Ins. Co.*, 370 F.2d 733.

If no inference of negligence may be drawn from the fact that an accident occurred, then, it is submitted, in this case there is a complete absence of probative facts sufficient to raise a question of fact for the jury.

In the case of *Lavender v. Kurn*, 327 U.S. 645, 66 S. Ct. 740, 744, 90 L. Ed. 916, the Supreme Court said,

"Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear * * *."

However, it is submitted that in the instant case, the only probative facts contained in the plaintiffs' case were that an accident occurred in the intersection.

In the case of *Lindberg v. Goode*, 200 Va. 784, 790, 108 S.E. 2d 364, 369, Virginia Supreme Court of Appeals, Mr. Justice Buchanan said,

"* * * while we are not unmindful of the weight which attaches to the verdict of a jury when the verdict has been approved by the trial court, it is the imperative function of the court to set aside the verdict of a jury * * *, when the evidence does not warrant the finding of the jury."

In the case of *Shaw v. Edward Hines Lumber Co.*, 249 F.2d 434 (1957) the Court of Appeals held that the questions raised by motion for directed verdict and motion for judgment N.O.V. are the same, therefore, the same arguments submitted in support of defendant's contention that the court erred in denying defendant's motion for directed verdict are adopted herein by reference. The above case of *Shaw v. Edward Hines Lumber Co.*, *supra*, is of interest in that it is almost identical to the instant case except that there the plaintiff was traveling on the unfavored street and collided with

defendant's truck at the intersection. The Court of Appeals stated that the burden was on the plaintiff to prove by a preponderance of evidence not only that defendant had been negligent in some respect so as to proximately cause the accident but also, under applicable Illinois law, that plaintiff had been free from contributory negligence and that from the record presented, plaintiff had failed to do so. The court also held that the reviewing court must view evidence and all reasonable inferences that may be drawn therefrom, in light most favorable to plaintiff in determining propriety of granting defendant's motion for directed verdict; *but that this did not mean* that court's may ignore uncontradicted, unimpeached evidence supporting defendant's position.

CONCLUSION

In summary, it is submitted that there was no evidence presented by the plaintiffs that defendant's operator, killed in the accident, was negligent. Therefore the trial court erred in not granting defendant's motion for a directed verdict at the close of plaintiffs' case.

The defendant's witnesses as well as those of the plaintiffs established conclusively that male plaintiff was guilty of negligence as a matter of law and thus defendant's motion for a directed verdict at the close of defendant's case should have been granted by the trial judge.

Furthermore since a motion for judgment *non obstante verdicto* would be governed by the same considerations as a motion for directed verdict, the trial judge erred in denying *fiat* the defendant's motion. It goes without saying that if the court believes that there was no negligence shown on the part of the defendant then, of necessity, the judgment awarded to the female plaintiff Mildred Bentley for property damage should also be

reversed because she too failed to establish a claim upon which she should be allowed to recover.

Appellant submits that, on the basis of the foregoing, the judgment of the trial court should be reversed and judgment entered for the appellant-defendant.

Respectfully submitted,

SWINGLE & MANN

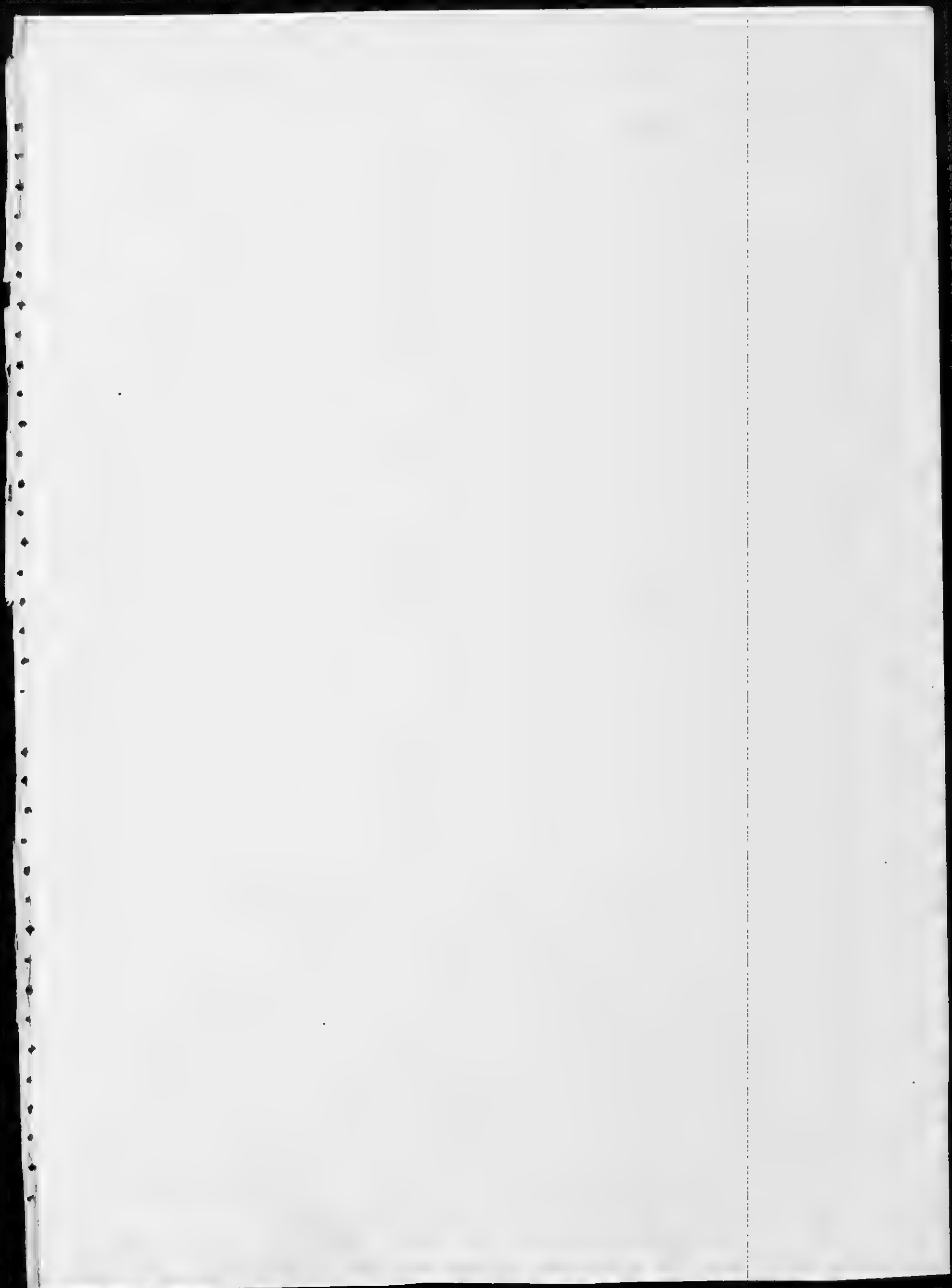
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,666

CARL T. BENTLEY and MILDRED BENTLEY,

v.

CARL W. CLEWLOW,

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE-PLAINTIFFS

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 4 1968

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COUNTERSTATEMENT OF THE CASE

Carl T. Bentley and Mildred C. Bentley, his wife, plaintiffs below, sued Carl W. Clewlow, defendant below for personal injuries and property damage sustained in an intersectional automobile collision on December 29, 1965. Trial was had with a jury, which returned a verdict for both plaintiffs. Defendant filed a motion for judgment non obstante verdicto. The motion was denied by the trial judge and this appeal followed.

On appeal defendant's basic contention is that the evidence adduced at trial did not warrant the trial judge's submission of the case to jury for decision. In other words, defendant urges that the trial judge erred in not granting his motions for directed verdict made during trial; that the judge likewise committed error in not granting his motion for judgment non obstante verdicto. The facts which were established at trial that are pertinent to these issues are as follows:

On December 28, 1965, the Bentleys had dinner at home between 8 and 9 P.M. Around eleven o'clock or eleven thirty that night Carl Bentley left home alone driving his wife's 1963 Plymouth. He went to a gambling house in the 900 block of "T" Street, Northwest and played a few hands of poker (Tr. 5). He had nothing to drink while there (Tr. 6) and left at approximately 1:45 A.M. on the morning of December 29th to return home. (Tr. 6) Enroute home Carl Bentley turned his automobile north on Fourth Street at "T" Street, Northwest. It was established that Bentley was familiar with the route he was taking (between "T" Street and the Reservoir). (Tr. 7-8) As he proceeded north on Fourth Street at this point, he was traveling in the center lane at approximately 25-30 M.P.H. (Tr. 8) Bentley testified that the last recollection he had was proceeding north on Fourth Street in the block between "V" Street and "W" Street. He stated that he did not remember a collision. (Tr. 9-10)

It was demonstrated through other evidence that the Bentley vehicle was involved in a collision with a vehicle owned by the defendant, Carl W. Clewlow, and operated by one Roger Burnham, who was killed in the crash. The collision occurred at the intersection of Fourth and "W" Street, N.W. in the District of Columbia.

Officer John A. Peterson of the Accident Investigation Unit who investigated the collision, set the scene for the jury with a blackboard diagram and related his findings: On this occasion the

weather was clear, the intersection well lighted, the road surface was asphalt and dry and the grade was level. Fourth Street was 39 feet wide north of the intersection of "W" Street and 34 feet wide south of the intersection; "W" Street was 24 feet wide. The police officer established that traffic proceeding east and west on "W" Street was controlled by stop signs. The stop sign controlling eastbound traffic was 16 feet from the intersection of Fourth Street. The point of impact between the vehicles was stated to have been 14 feet north of the south curb and 20 feet east of the west curb. (Tr. 55) The officer reported that the initial impact caused damage to the full front of the Clewlow vehicle and to the left front fender and front door of the Bentley vehicle. This testimony was corroborated by photographs taken by Officer Peterson at the scene and introduced into evidence as plaintiffs' exhibits 3 through 17. (Tr. 64) The officer further stated that when he attempted to interview Bentley at the hospital he smelled alcohol on his breath. (Tr. 68) On cross-examination by plaintiffs' counsel the officer was asked whether he made the following statement on deposition: "I approached the man myself and I tried to get close enough to the man to smell his breath, and he had extremely bad breath, so I couldn't verify that it was alcohol. The breath was too bad to stomach." The officer replied: "I believe that's what I said." (Tr. 80)

Richard Hoffman, the only survivor in the Clewlow vehicle, established that Roger Burnham was driving the car; Sidney Clewlow, defendant's son was seated in the rear and that he (Hoffman) was seated in the right front passenger seat. (Tr. 100) The vehicle was traveling east on "W" Street near Fourth Street. Hoffman saw the stop sign on "W" Street at Fourth Street. (Tr. 101-102) He stated that the Clewlow vehicle stopped for the stop sign then proceeded into the intersection at about 5-8 miles from him. At this point Hoffman testified that he saw the head lights of the Bentley auto-

mobile. He expressed the opinion that Bentley was travelling between 50 and 60 miles per hour. (Tr. 121) Hoffman further testified that prior to impact he heard no brakes applied by Bentley and that the Bentley vehicle took no evasive action. (Tr. 122) On cross-examination Hoffman admitted that each occupant of his car had had at least one cup of beer on that evening. (Tr. 127-132) He further stated damage to the vehicle in which he was riding was to the front and that his vehicle struck the Bentley vehicle. (Tr. 146-148)

Prior to the close of the evidence the following Traffic Regulations for the District of Columbia were received in evidence at the plaintiffs' request: Section 10, relating to obedience to traffic signs and devices; Section 48, pertaining to yield the right-of-way and Section 99(c), failure to give full time and attention. (Tr. 88-b)

At the close of the plaintiffs' case and again at the close of all evidence defendant made motions for a directed verdict. The motions were denied by the trial judge. (Tr. 111 and Tr. 170)

ARGUMENT

The law in this jurisdiction and throughout the Federal Circuit is clear and uniform and authority is abundant regarding the standard and criteria which must be followed by the trial and appellate courts in their consideration of motions for directed verdict and those for judgment non obstante verdicto. The standard set for both such motions is, of course, the same.

This Court's latest expression on the subject was enunciated in the recent case of *Becker, et al v. Colonial Parking, Inc.*, ___ U.S. App. D.C. ___, No. 21,100, decided January 27, 1969. In its delineation of the criterion by which the assessment of the issue is to be made, this court said:

"The ultimate question is whether defendant can fairly be said to be responsible for the injuries complained of. If reasonable men could not differ in answering that question the Court, it is said, should not allow the jury to speculate about it; but if reasonable men could differ and draw different inferences from the facts when two are offered and those found could conclude that defendant's conduct was negligent then the jury ought to be permitted to answer the ultimate question."¹

The Court of Appeals for the First Circuit has said that it is well settled that it must view the facts in the light most favorable to plaintiff, giving him the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Hunt v. Rhodes*, 369 F.2d 623 (1st Cir. 1966)

Setting forth its guide on appeal, the Third Circuit has stated that it must consider the evidence in the strongest light in favor of the party against whom the motion is made, and give him the advantage of every fair and reasonable intendment that the evidence can justify. *Doveberg v. Dow Chemical Co.*, 353 F.2d 963 (3rd Cir. en banc 1965)

In the same vein the appellate court for the Ninth Circuit has pronounced that where the evidence on material facts is conflicting or where on undisputed facts fair-minded men of ordinary intelligence may differ as to the inference to be drawn, or where on even a conceded state of facts a different conclusion would be reasonably reached by different minds, in all such cases negligence is a question of fact. The Court may not upset a finding of negligence unless clearly erroneous. *Yellowstone Pipe Line Company v. Kuczynski*, 283 F.2d 415 (9th Cir. 1960)

¹Drawing from its language in *McGettigan v. National Bank of Washington*, 115 U.S. App. D.C. 384, 320 F.2d 703 (1963). See also: *McWilliams v. Shepard*, 75 U.S. App. D.C. 334, 127 F.2d 19 (1942)

Speaking on the well settled standards required to be observed by the Court in ruling on a motion for judgment non obstante verdicto, the Court of Appeals for the Seventh Circuit in the case of *Hardware Mutual Casualty Co. v. John Chapman et al*² said:

" . . . It is proper for the trial court to deny such a motion 'where the evidence, along with all inferences to be reasonably drawn therefrom, when viewed in the light most favorable to the party opposing such motion, is such that reasonable men in a fair and impartial exercise of their judgment may reach different conclusions.' " (case cited.)

On the question of contributory negligence (raised by defendant in this appeal) the Eighth Circuit has ruled:

"Contributory negligence, as a matter of law, exists only where the facts are such that a determination thereof could not cause doubt or question in the minds of reasonable men. One of the purposes of a jury of 12 persons is to have such persons, acting as a group, determine matters that might be of doubt in the mind of one or another. It is only where the facts are so persuasive that reasonable men exercising impartial and sound judgment, could not differ that a court is justified in preempting a jury's prerogatives by verdict directions or judgment notwithstanding the verdict." ³

Thus it appears that the molds have been cast for the issues presented here. It now remains to be determined whether the facts established at trial properly fit into the jury's die or that of the Court.

The defendant's chief complaint seems to be that the evidence adduced during trial failed to establish any negligence on his part or

² 272 F.2d 614, 616 (7th Cir. 1960)

³ *Ottertail Power Co. v. Duncan*, 137 F.2d 157, 159 (8th Cir. 1943).

in the alternative did establish contributory negligence on the part of the plaintiffs as a matter of law.

In his appraisal of the facts, as pointed out by the trial judge,⁴ defendant has failed to recognize the inclusion in evidence of three very important traffic regulations then and there in effect in the District of Columbia:

Part I, Section 10(a): "The driver of any vehicle shall obey the instructions of any traffic control device applicable thereto, placed in accordance with the provisions of these regulations, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in these regulations."⁵

Part I, Section 48: "Except when directed to proceed by a police officer or a traffic control signal, every driver of a vehicle approaching an intersection at which an official 'Stop' sign has been erected shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time that such vehicle is moving across or within the intersection. (CO No. 62-2190)"⁶

Part I, Section 99(c): "An operator shall, when operating a vehicle, give full time and attention to the operation of the same."⁷

⁴Tr. 110-111.

⁵Traffic & Motor Vehicle Regulations of the District of Columbia, Part I Rules of the Road, Section 10(a), p. 9.

⁶Traffic & Motor Vehicle Regulations of the District of Columbia, Part I Rules of the Road, Section 48, p. 23.

⁷Traffic & Motor Vehicle Regulations of the District of Columbia, Part I Rules of the Road, Section 99(c), p. 38A.

Considering these traffic regulations in an evaluation of the evidence to determine the presence or absence of negligence on the part of the defendant becomes important, because of the existence of the stop sign controlling traffic on "W" Street. Even though Bentley did not recall any of the details of the collision and despite the testimony of the witness Hoffman that his vehicle stopped in obedience to the stop sign, his additional testimony was that the Clewlow car proceeded into the intersection and a collision resulted. At this point all three traffic regulations referred to, become applicable. And when we add to these circumstances the fact that initial damage to the Clewlow vehicle was to its full front and to the Bentley vehicle its left front fender and front door, one legitimate inference which reasonable minds could properly draw is that there had been a violation by the defendant's car of one or more of these traffic regulations which, without more in this jurisdiction is negligence. Whether or not there was a violation of a traffic regulation by the defendant's operator was a jury question. The set of circumstances here was not so one-sided as to leave no room for doubt. At the very least fair-minded men could draw a different conclusion as to the existence or non-existence of negligence. Accordingly, the question was not one of law for the Court but one of fact for the jury.⁸

In the alternative the defendant urges that the trial court should have granted his motions for the reason that the evidence clearly established contributory negligence on the part of Bentley as a matter of law. The acts of contributory negligence on the plaintiff's part asserted by the defendant, consist of alleged drinking and speed.⁹ Let us first examine the evidence of drinking: Bentley

⁸*McWilliams v. Shepard, supra*, 75 U.S. App. D.C. 334, 127 F.2d 19 (1942)

⁹Defendant in his brief also assigns as an act of contributory negligence the fact that Carl Bentley had taken a tranquilizer prior to the accident. This assertion is not borne out in the trial transcript.

expressly denied having anything to drink. On the other hand, at one point in his testimony, the police officer stated that he smelled alcohol on Bentley's breath. However, the officer admitted that in his deposition he had testified that the plaintiff's breath was so bad, he could not verify the presence of alcohol. Obviously, here is a conflict in the evidence. This conflict can be properly resolved only by submitting the issue to a jury for determination. On the matter of speed—Bentley testified that as he proceeded up Fourth Street, he was travelling about 25-30 M.P.H. Hoffman, however, opined that when he first saw the headlights of Bentley's car the car was travelling between 50 to 60 M.P.H. Again we are faced with a conflict in the testimony, concerning a material fact. It is fundamental that no court is permitted to resolve conflicts in the evidence. This is within the exclusive province of the triers of the fact.

Plaintiffs submit that the evidence in this case when viewed in the strongest light favorable to the plaintiffs and when such evidence is afforded all of the legitimate inferences stemming therefrom, fair-minded men in an honest appraisal could differ concerning the existence or non-existence of negligence on the part of the defendant and contributory negligence on the part of the plaintiffs.

CONCLUSION

The trial judge in his rulings on defendant's motions for a directed verdict and for judgment non obstante verdicto, met the criterion laid down by this Court, and correctly submitted the case to the jury for determination. It is, therefore, respectfully urged that the jury's verdict be upheld and the judgment entered below be affirmed.

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APPENDIX

REGULATIONS INVOLVED

Traffic and Motor Vehicle Regulation of the District of Columbia:

Part I—Rules of the Road:

Section 10. Obedience to Traffic Signs, Signals or Devices

- (a) The driver of any vehicle shall obey the instruction of any official traffic control device applicable thereto, placed in accordance with the provisions of these regulations, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in these regulations.

Section 48. Vehicles Entering Through Highway for Stop Intersection.

Except when directed to proceed by a police officer or a traffic control signal, every driver of a vehicle approaching an intersection at which an official "Stop" sign has been erected shall come to a complete stop and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time that such vehicle is moving across or within the intersection. (C.O. No. 62-2190)

Section 99. Obstruction to Driver's View or Driving Mechanism

- (c) An operator shall, when operating a vehicle, give his full time and attention to the operation of the same.
-